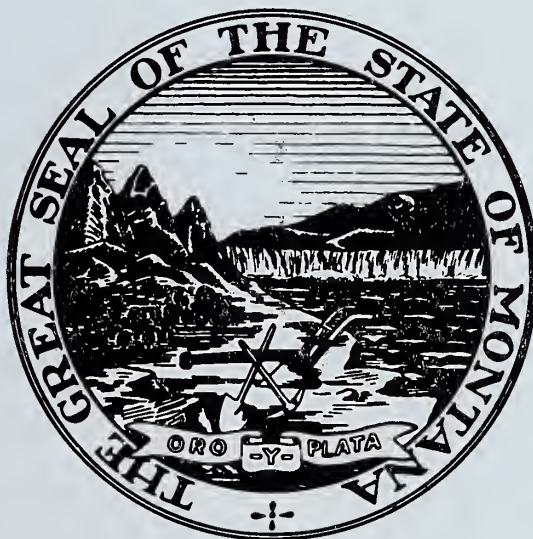


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**PUBLIC EMPLOYEE LABOR RELATIONS
INDEX OF DECISIONS
AND ORDERS OF THE
MONTANA BOARD OF PERSONNEL APPEALS
AND THE
MONTANA COURTS**



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**PUBLIC EMPLOYEE LABOR RELATIONS
INDEX OF DECISIONS
AND ORDERS OF THE
MONTANA BOARD OF PERSONNEL APPEALS
AND MONTANA COURTS**

1974 - 1985

Prepared By
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This volume indexes Montana public sector labor relations decisions from 1974 through 1985. The focus is on decisions and orders of the Montana Board of Personnel Appeals, specifically unfair labor practice and unit determination cases. The categorization used in this index is that of the National Public Employment Reporter (NPER) published by the Labor Relations Press, Fort Washington, Pennsylvania.

This volume is organized into two major sections and eight appendices. For ease of use, each section and the appendices are printed on different colored paper.

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PREFACE

The purpose of this index is to provide a compilation of Board of Personnel Appeals decisions pertaining to collective bargaining in the public sector in Montana. It is hoped that this index will be useful to public employees, public employers, labor organizations, neutrals, and labor relations practitioners.

This index is not designed to be a legal document. It is compatible with a national index which is widely used and easily understood by persons with varying backgrounds.

Numerous precedents have been established by order of the Board of Personnel Appeals, with subsequent review by the Courts. Other precedents have arisen from declaratory rulings, from hearing examiner decisions and from petitions for writ of supervisory control to the Montana Supreme Court. Users of this index are encouraged to carefully analyze these decisions since they are now recognized as precedent by hearing examiners, the Board and the Courts.

Katherine A. Althen from Kalispell and Kenneth D. Bryson from Bozeman produced this index under contract. Linda Skaar, Appeals Division, Department of Labor and Industry also deserves much credit for editorial assistance.

This index covers decisions made by the Board of Personnel Appeals over the past eleven years. In the future, annual updates will be available each spring. Although it is necessary to recover the cost of the indexing project, the charge for each volume is being kept low to insure as wide a distribution as possible. The Board will supply copies of individual decisions for a nominal copying charge.

Robert R. Jensen
Administrator

USING THE INDEX

As you use this index you may be interested in either the subject matter of cases or in specific cases themselves. If, for example, you are interested in the subject “employer refusal to process a grievance” you would first consult the Master Index of Key Classification Categories (blue) where you find “Grievances - Grievance Arbitration” listed as 47. Looking under that number in the Sub-Categories section you find that 47.22 is the classification number which denotes employer refusal to process a grievance. The asterisk (*) by this number tells you that in this category there is a citation from a Montana case in the section of Annotations of Montana Cases. Turning to the sub-headings under 47.22 in the Annotations section (white) you find that seven cases have dealt with employers’ refusal to process a grievance. Each excerpt is followed by a specific case number, for example ULP #1-75. Referring to Appendix V (Unfair Labor Practice Cases) (green) you find specific information about ULP #1-75: the title of the case, the date, the hearing examiner, the judicial history and all subject categories under which this case is indexed.

On the other hand, if you are interested in a specific case you would look in the appropriate appendix. For example, a unit determination case involving AFSCME, MPEA and the Department of Social and Rehabilitation Services (UD #10C-74) would be listed in Appendix I: Unit Determination Cases. Here you find the case name, the date the case was decided, the hearing examiner and ten index numbers. Specific information relating to the case is listed under those classification numbers with asterisks (*). Classification numbers without asterisks indicate only that the topic was addressed in the case.

ADDITIONAL INFORMATION

In order to aid in your examination of the judicial cases indexed in this volume, the appendices include case citations for the Montana and Pacific Reporters. Listings of Montana District Court cases include the judicial district, the specific cause number, and the date of the decision. Copies of all decisions are available from the Montana Board of Personnel Appeals, P.O. Box 1728, Helena, Montana 59624.

CHAPTER 1

The first part of the book is devoted to the study of the properties of the function $f(x)$ defined by the equation $f(x) = x + \frac{1}{x}$. This function is defined for all real numbers x except $x = 0$. The function is symmetric about the line $x = 0$, and it has a vertical asymptote at $x = 0$. The function is increasing for $x > 0$ and decreasing for $x < 0$. The function has a minimum value of 2 at $x = 1$ and a maximum value of -2 at $x = -1$. The function is concave up for $x > 0$ and concave down for $x < 0$.

The second part of the book is devoted to the study of the properties of the function $f(x) = x^2 + \frac{1}{x^2}$. This function is defined for all real numbers x except $x = 0$. The function is symmetric about the line $x = 0$, and it has a vertical asymptote at $x = 0$. The function is increasing for $x > 0$ and decreasing for $x < 0$. The function has a minimum value of 2 at $x = 1$ and a maximum value of -2 at $x = -1$. The function is concave up for $x > 0$ and concave down for $x < 0$.

CHAPTER 2

The first part of the book is devoted to the study of the properties of the function $f(x) = x^3 + \frac{1}{x^3}$. This function is defined for all real numbers x except $x = 0$. The function is symmetric about the line $x = 0$, and it has a vertical asymptote at $x = 0$. The function is increasing for $x > 0$ and decreasing for $x < 0$. The function has a minimum value of 2 at $x = 1$ and a maximum value of -2 at $x = -1$. The function is concave up for $x > 0$ and concave down for $x < 0$.

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 - 31.23 Contents of Request
 - *31.24 Proof of Majority Status
 - *31.25 Unit Description
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- 31.44 Necessity for Hearing
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 - *34.16 Professional [See also 15.12, 15.21, 15.27, 15.6, 34.4, and 46.91.]
 - 34.17 Residual
 - *34.18 Service and Maintenance [See also 15.17, 15.25, 15.53, 15.83, and 15.933.]
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- *35.5216 Timing, Opportunity to Rebut
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- 35.55 Conduct by Labor Organization
- 35.551 Waiver or Reduction of Initiation Fee
- 35.552 Other Conduct
- *35.56 Employee Conduct
- 35.561 Unit Employees
- 35.562 Non-Unit Employees
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- *35.61 Unfair Practices
- 35.62 Pending Court Action
- *35.8 Remedy [See also 01.29.]
- *35.81 New Election [See also 74.38.]
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- 36.11 Procedures
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- *36.12 Basis for Clarification
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- *36.21 Procedures
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- 36.22 Forms of Modification
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- 36.3 Effects of Clarification or Modification
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 - *37.12 Standards
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 - *37.16 Standing
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 - 41.12 Tripartite
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 - 41.131 Multi-Employer
 - *41.132 Multi-Union [See also 34.12.]
- *41.2 Negotiator
 - *41.21 Choice of
 - *41.22 Authority [See also 09.11, 11.31, and 72.530.]
- 41.3 Bargaining Procedure [See also 09.11, 11.31, and 72.530.]
 - 41.31 Ground Rules [See also 72.55 and 72.56.]
 - 41.32 Time Limits
 - 41.33 Informal Agreements
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 - 41.61 Definition
 - 41.62 Scope
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- *42.11 Case Law
- *42.12 Statutory
- *42.2 Permissive Subjects [See also 53.11, 55.92, 72.54, 72.589, 73.45, and 73.477.]
- *42.21 Case Law
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- *42.31 Case Law
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 - 43.151 Legal Holidays
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 - 43.153 Accrued Vacation Credit
 - 43.154 Vacation Compensation
- *43.16 Leave
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 - 43.167 Sabbatical
 - *43.168 Sick
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 - *43.31 Promotion
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 - *43.74 No-Strike Clause
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- *43.8 Union Security [See also 24.22.]
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- 43.83 Agency Shop [See also 24.221.]
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- 43.85 Maintenance of Membership
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- 43.91 Organizational Structure
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 - 46.51 By Union Membership
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- 47.1 Formal Grievance Procedure
 - *47.11 Steps and Time Limits
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- 47.14 Verbatim Record
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- *47.18 Mandatory Submission to Arbitration
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- *47.311 In Investigatory or Disciplinary Interview [See also 72.335.]
- 47.312 Choice of Representative at Interview [See also 22.37.]
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- 47.52 Arbitrability
- *47.521 Scope of Arbitration
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- *47.54 Deferral to Arbitration by Board of Personnel Appeals [See also 71.8, 71.81, and 71.82.]
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- *47.56 Public Policy
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- *47.87 Enforcement [See also 47.22, 47.83, 72.71, 72.76, and 73.51.]

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- *51.01 Definition
- 51.1 Declaration of Impasse
- 51.11 Mandated Time Limits
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- 51.3 Authority of Board of Personnel Appeals
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SECTION II
ANNOTATIONS OF MONTANA CASES

ANNOTATIONS OF MONTANA CASES

01. BOARD OF PERSONNEL APPEALS

01.1: Jurisdiction [See also 01.32 and 33.1]

See ULP #12-75 and 1976 District Court decision in UD #22-75 for discussion of jurisdiction questions related to the transition from the Professional Negotiations Act for Teachers (repealed July 1, 1975) to the Public Employees Collective Bargaining Act.

The Collective Bargaining for Public Employees Act provides no remedy for a union breaching a duty it owed to a member “by its failure to fairly represent a grievance. Section 39-31-402, MCA does not encompass this situation.” The Montana Supreme Court held that the District Court (as opposed to the federal court) had jurisdiction. *Ford v. University of Montana* (1979)

Montana Supreme Court Justices “still recognize the holding in *Ford* that a District Court has original jurisdiction to hear claims that a union has breached its duty of fair representation. [They] no longer recognize, however, the dicta in *Ford* which states that a breach of the duty of fair representation is not an unfair labor practice within the meaning of Section 39-31-401, MCA. Further, [they] no longer recognize other dicta in *Ford* which states that finding jurisdiction in the Board of Personnel Appeals on these matters would necessarily deprive the District Court of jurisdiction.... [They] therefore [held] that the Board of Personnel Appeals has jurisdiction to hear claims that a union has breached its duty of fair representation.” ULP #24-77 Montana Supreme Court (1981)

Judge Clark challenged the Board of Personnel Appeals’ jurisdiction over himself as “an unconstitutional infringement by the Legislative Branch over the Judicial Branch and ... a violation of the separation of powers.” The Board concluded that it “has the requisite jurisdiction to act in this matter.” ULP #11-78

The Billings School Bus Drivers Association, employees of KAL Leasing, Inc., are not public employees, consequently the Board of Personnel Appeals does not have jurisdiction. UD #18-78

“Because employee rights under Section 39-31-201 have been violated, this matter is no longer solely one of breach of contract or one for internal review within a union.... The Board of Personnel Appeals has initial jurisdiction in unfair labor practice matters, and it cannot ignore or delegate that jurisdiction.” ULP #2-79

“[B]ecause an employee may have recourse to a district court as a possible choice of forum to file his claim (possibly a declaratory judgment action) does not foreclose him from filing an unfair labor practice charge with the Board if he can assert a statutory violation under Section 39-31-401 MCA.” ULP #3-79 District Court (1981)

“[T]his Board has the jurisdiction to interpret and enforce a contract when that contract is the center of the unfair labor practice charge.” ULP #7-80

“The [Board’s] authority to remediate unfair labor practices’ ... shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement...’” ULP #34-80

See also ULPs #50-79 and #3-82.

01.13: Jurisdiction - Conflict with NLRB Jurisdiction

A unit determination petition was dismissed because “the NLRB agreed to take jurisdiction and conduct an election for certain employees at Opportunities, Inc., in Great Falls, Montana.” UD #1-81

“The identity of the employer was not litigated in the NLRB proceeding and the Board of Personnel Appeals is not estopped from determining the identity of the employer in this proceeding.... Because the Great Falls Transportation District is an employer within the meaning of 39-13-103 MCA this Board will exert jurisdiction.” UD #6-84

01.131: Jurisdiction - Conflict with NLRB Jurisdiction - Deferral by NLRB

The Board of Personnel Appeals “does not find that the School District has any control over the labor relations and daily operations of the Employer [B.W. Jones and Sons, Inc., providers of school bus drivers for the Billings School District] other than minimal, necessary controls.... [W]e have a situation where the National Labor Relations Board has refused jurisdiction, and where this Board is unable to establish jurisdiction.... Unfortunately, there are no statutes in Montana for control of collective bargaining in the private sector.” ULP #29-76

“The NLRB has consistently refused to exert jurisdiction over bus companies whose major function is the transportation of students to schools.” UD #18-78

01.21: Authority and Duty of State Board - Authority of Board Personnel

“[T]he question of personal privacy versus the public’s right to know ... is not properly a determination which an agent of the Board should make.” ULP #30-77

“Neither the Board of Personnel Appeals’ authority to remedy an unfair labor practice pursuant to 39-31-406 nor a Union’s duty to fairly represent all bargaining unit members is vitiated by [an] alleged breach of contract by a bargaining unit member.” ULP #16-83

“The Board of Personnel Appeals does not have the jurisdiction to [rule on] the rights and protections of the United States and Montana Constitutions.” ULP #5-84

See also ULPs #20-78, #5-80, #34-80, and #19-81.

01.24: Authority and Duties of State Board - Authority to Fashion Units [See also 33.1.]

“In view of the discretionary provisions that are set forth in sections 39-31-202, MCA, and 39-31-207, MCA, the Board of Personnel Appeals may not be required by writ of mandate to conduct an election forthwith, absent a showing of an abuse of discretion by the Board of Personnel Appeals.” ULP #20-78 Montana Supreme Court (1979)

01.25: Authority and Duties of State Board - Determination of Arbitrability

“It is not within the jurisdiction of the Board to decide whether grievances are suitable for submission to contractual grievance procedures. Nor is it the right of management or labor to resolve disputes of the contract by ignoring them. The only party which can initiate or withdraw a grievance is the aggrieved party, if the grievance procedure is to be utilized at all.” ULP #13-74

“Because of the Teamster’s breach of the duty of fair representation, the grievance was not processed when the contract contained a binding arbitration clause. Thus, the arbitration forum, one uniquely designed to make the determination, was lost.” ULP #24-77

“It is *not* within the jurisdiction of the Board to decide whether grievances are suitable for submission to contractual procedures ... [or] to rule on the merits of the grievance.... This board need only decide that the parties agreed to arbitrate the matter in dispute.... [It is] then obligated to order the grievance processed and sent to arbitration, if necessary.” ULP #7-80

“The Board of Personnel Appeals does have [the] authority to implement the *Collyer* deferral policy.” ULP #43-81

See also ULPS #13-78, #19-79, #5-80, and #22-81.

01.27: Authority and Duties of State Board - Interpretation of Agreements

“The grievance, which was not clearly frivolous, would have been found to be meritorious had it been fully and fairly processed.” ULP #24-77

The Board would “not determine whether a contract clause was violated [because the Employer made public comments about specific grievances].... [The question] should be processed under a grievance procedure.” ULP #30-77

“[T]here exists clear precedent that the presence of a problem of contractual interpretation would not, in itself, deprive the Board [of Personnel Appeals] of jurisdiction in such cases.” ULP #29-79

01.28: Authority and Duties of State Board - Limitations on Board Authority

The Board of Personnel Appeals cannot rule on the *merits* of a grievance in question.

A collective bargaining agreement can “be enforced through civil action in a court of law.” The Board of Personnel Appeals will not attempt to enforce arbitration awards. ULP #39-80

“No investigation of the unfair labor practice charges is necessary because the charges fail to allege facts which constitute a violation of the [Public Employees Collective Bargaining] Act. Without an alleged violation of the Act, [the] Board does not have jurisdiction.” ULP #16-83

See also ULP #18-78.

01.29: Authority and Duties of State Board - Remedial Powers [See also 35.8 and 74.12]

“The Board of Personnel Appeals is not a proper forum to bring a breach of contract action if grounds for such an action exist.... Such an action would probably lie outside the remedies within the jurisdiction of this Board.” DC #8-77

See also ULPS #19-77, #24-77 Montana Supreme Court (1981) #20-78, #11-79, and #19-79.

01.31: Authority and Duties of Board of Personnel Appeals - Rulings

Section 2-4-501, MCA, is derived from Section 8 of the Revised Model State Act. That section provides “an individual a way [through declaratory rulings] to determine whether or not the activity he contemplates is in violation of a statute or of this agency’s rule.” DR #1-79

“Petitioner is attempting through the declaratory ruling petition to have input and control over this Board’s discretion whether or not it will serve the employer petition.” This is not a proper use of declaratory rulings. DR #1-79

See DRs #1-76, 2-76, 1-77, 2-77, 1-80.

01.32: Authority and Duties of State Board - Statutory Authority

“Violation of either [Section 39-31-401 MCA or 39-31-402 MCA] is subject to the jurisdiction of the Board [of Personnel Appeals].” ULP #11-79

See also ULPs #11-78, #18-78, #3-79, and #50-79 and ULP #3-79 District Court (1981).

03. STATE LEGISLATION**03.12: State Constitution - Interpretation, Construction**

The School District “may not use Article X, Section 8 of the 1972 Montana Constitution as an excuse not to bargain matters which are bargainable under the Public Employees Collective Bargaining Act.” ULP #5-77

“ ‘Words and phrases used in the codes or other statutes of Montana are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, as amended, are to be construed according to such peculiar and appropriate meaning or definition.’ [Department of Highways vs. Public Employees Craft Council, 165 Mont. 349, 529 P.2d 785 at 787 (1974).]” ULP #20-78

03.21: Collective Bargaining for Public Employees Act - Amendments

Amendments effective as of July 1, 1975 place high school and elementary teachers under the Collective Bargaining for Public Employees Act. UM #1-75

03.22: Public Employee Relations Act - Interpretation, Construction

“[T]he provisions of Section 59-1615 RCM 1947 ... gave continuing protection to those employees, whether supervisory or not, who were recognized prior to the effective date of the Act.... [T]his grandfather clause applies to the recognition of the bargaining agent as well as the ratification of existing bargaining agreements.” ULP #2-73

“Registered professional engineers and engineers in training” are not public employees under the [Montana Public Employees Collective Bargaining Act] and, therefore, must be excluded from collective bargaining units. UD #11-76

“In the construction of a statute, the intention of the legislature is to be pursued. When a general and particular provision is inconsistent, the latter is paramount to the former. A particular intent will control a general intent that is inconsistent with a particular intent (93-401-16, RCM 1947).” ULP #25-76

“The test [related to the Act’s grandfather clause] developed by the Board of Personnel Appeals is a rational, considered effort by the Board of Personnel Appeals to assure an effective bargaining unit. The test considers the policy of the act, i.e., to remove strife and unrest from bargaining units, as well as some of the factors set forth in section 39-31-202, MCA, for determining unit composition--the ‘history of collective bargaining’ and the ‘desires of the employees.’ The result accomplished preserves the public policy underlying the act. We find the Board’s approach to be a rational one for determining bargaining unit memberships.” UC #1-77 Montana Supreme Court (1982)

“An employer may discharge an employee for a good reason, for a poor reason, or for no reason at all, so long as no statutory provisions are violated....” ULP #12-78

“Nothing in the Montana act for collective bargaining for public employees requires a union to be the exclusive bargaining representative before it can represent employees whose section 39-31-201 rights have been violated.” ULP #2-79

“[T]he word “certification” as used in Section 39-31-206 was not intended by the legislature to include recognition and for that reason the section has nothing to do with uncertified labor organizations which act as exclusive representatives of their membership by virtue of public employer recognition of them as such.” CC #2-81 District Court (1983)

“[I]t appears that any violation of Section 39-31-401(1) MCA necessarily will derive from, and be dependent upon whether an independent violation of Section 39-31-401(2) or (5) MCA is found.” ULP #16-84

“Regarding the Section 39-31-401(1) MCA charge, the question raised is whether there was an independent violation of the teachers’ Section 39-31-201 MCA rights as protected by Section 39-31-401(1) MCA. There can be no derivative violation of Section 39-31-401(1) MCA unless a violation of Section 39-31-401(5) MCA is found.” ULP #29-84

“The whole theme of Section 302 is prohibition against employer aid to a union until the circumstances under which it is permitted are identified in Section 302(c).... The federal act [NLRA] states what the employer may do; the Montana Act expresses what the employer must do.” ULP #29-84

See also ULPs #14-77, #18-78, #20-78, #19-79, #31-79, #5-80, #7-80, and #39-80 and UD #11-76 District Court (1977 and 1978).

03.31: Other State Legislation - Education

The Montana Legislature has placed teachers under the Public Employees Collective Bargaining Act, but also provides for individual contracts for teachers. ULP #20-76

The nonrenewal of a nontenured teacher’s contract did not constitute a “grievance” subject to the binding decision of an arbitrator under the agreement and was not allowed by the “Professional Negotiations Act for Teachers” then in effect. *Wibaux Education Association v. Wibaux County High School* (1978)

For information related to the “Professional Negotiations Act for Teachers” see ULP #12-75 and UD #22-75 District Court (1976).

See also *Riphey v. Flathead Valley Community College* (1984) and *Bridger Education Association v. Carbon County School District No. 2* (1984).

03.34: Other State Legislation - Municipal

See *Great Falls and Raynes v. Johnson* (1985).

03.341: Other State Legislation - Municipal - Home Rule

See *Billings Fire Fighters Local 521 v. Billings* (1985).

03.36: Other State Legislation - Police and Fire

“Section 7-32-4155 and 7-32-4164, MCA hereafter referred to as the Metropolitan Police Act, give local government police commissions the jurisdiction and duty to hear charges brought against police officers concerning incompetence, incapacity and misconduct.” ULP #18-83 District Court (1985)

03.4: Conflict between Labor and Other State Legislation

The Board of Personnel Appeals has jurisdiction to hear claims that a union has breached its duty of fair representation for administrative remedies. Original jurisdiction of such claims lies in the District Court. ULP #24-77 Montana Supreme Court (1981)

The Montana Public Employees Collective Bargaining Act and the Metropolitan Police Act “do not conflict. They provide for independent procedures with two different purposes.” ULP #18-83 District Court (1985)

04. FEDERAL LEGISLATION AND REGULATIONS

04.1: U.S. Constitution

See *Reiter v. Yellowstone County* (1981) and *Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals* (1984).

04.5: Federal Pre-Emption

The Collective Bargaining for Public Employees Act provides no remedy for a union allegedly breaching a duty it owed to a member “by its failure to fairly represent a grievance. Section 39-31-402, MCA does not encompass this situation.” The Montana Supreme Court held that the District Court (as opposed to the federal court) had jurisdiction. *Ford v. University of Montana* (1979)

04.6: Conflict with State Legislation

See UD #5-80.

06. RULES AND REGULATIONS OF BOARD OF PERSONNEL APPEALS

06.15: Review by Other Agency, Legislature or Courts

The Board of Personnel Appeals’ “argument that the adoption of the rule was done in view of the statutory deadlines peculiar to the school districts and in order to facilitate the effective administration of the act it is charged with administering is persuasive.” *Montana Education Association v. Board of Personnel Appeals* (1977)

06.3: Interpretation, Construction

The Board of Personnel Appeals has “the statutory authority to promulgate such rules covering partial decertification as [they] deem may be required in the future.” DR #1-76

A hearing examiner cannot find a valid charge outside the scope of the pleadings. ULP #18-78

In response to a motion to dismiss a complaint because of minor discrepancies, the hearing examiner said: “The best practice would be to keep the information on the complaint consistent, but minor inconsistencies will not be allowed to prejudice the rights involved.” ULP #2-79

06.4: Validity

The District Court held that the Board of Personnel Appeals’ amendment of ARM 24-3.8(14)-S8090 “to provide that a petition for decertification of a unit comprised of school personnel shall be filed with the Defendant not more than 90 days but not less than 60 days before April 1 of the year the decertification is to take place” was not arbitrary, capricious or illegally discriminatory. *Montana Education Association v. Board of Personnel Appeals* (1977)

07. ROLE OF PUBLIC AND GOVERNMENTAL BODIES

07.131: Role of Legislative Bodies - Enabling Legislation - Passage

In 1975 the Montana Legislature amended Section 59-1602 of the Public Employees Collective Bargaining Act “to include Professional Instructors, Teachers and Paraprofessional Instructors employed by School Boards and Districts as Public Employees,” and repealed Sections 59-1608.1, 59-1608.2, and Sections 75-6115 through 75-6128 effective July 1, 1975. Nothing in the

1975 Act allows the Board of Personnel Appeals to nullify an exclusive representative recognition by a public employer when no question of representation exists, even though such recognition was gained under a prior law. UD #19-75

09. GENERAL LEGAL PRINCIPLES

09.113: Agency - General Principles - Implied Authorization

The Union is a proper party to an unfair labor practice case even before it has been certified as the exclusive representative for a proposed unit. ULP #15-74

“In accepting the signature of the President of the local unit on the stipulation in question, the Board of Personnel Appeals relied on a well settled point of law: Where a person has been the agent of another in a particular business (in this case collective bargaining) and continues to act within the apparent scope of this former authority, it will be presumed that his authority still continues and his acts will bind his principal unless the principal makes known that the agent no longer represents him.” DC #4-83

09.12: Agency - Responsibility of Employer for Acts or Statements of Others

“There was no evidence that [the County’s bargaining representative] acted outside the County’s negotiating policies.” ULP #31-82.

09.121: Agency - Responsibility of Employer for Acts or Statements of Others - Supervisory or Managerial Employees

“An anti-union act was committed when Mr. Croff [Ms. Widenhofer’s supervisor] presented the tainted evaluation to the Trustees. The Trustees are responsible for this action by Mr. Croff.” ULP #28-76 Montana Supreme Court (1979)

09.2: Contract

“[T]he individual hiring contract is subsidiary to, and in fact superseded by, the collective bargaining agreement.” ULP #7-80. See also ULP #29-80.

See also ULP #34-80.

09.21: Contract - General Principles

“The Montana Supreme Court, in the case of *Masset v. Anaconda Co.*... held that, ‘Hence, we see no reason not to apply the same rules of construction in cases involving collective bargaining contracts as we apply in cases dealing with contract law generally.’” DC #8-81 District Court (1982)

See also ULP #18-81.

09.231: Contract - Construction of Contract - Written Terms

“‘[C]ontract language cannot be considered ambiguous merely because the parties disagree over the meaning of a phrase, but rather must be judged by whether it is so clear on the issue in question that the intentions of the parties can be determined using no other guide than the contract itself -- whether a single, obvious, and reasonable meaning appears from a reading of the language in the context of the rest of the contract.’ (Hill and Sinicropi, *Evidence in Arbitration*, page 53).” ULP #18-81

09.25: Contract - Breach of Contract

See ULP #5-80.

09.3: General Legal Principles - Evidence [See also 32.57, 35.49, 47.13, 71.211, 71.517, and 81.48.]

“[T]he Hearing Officer should have included evidence of events occurring prior to Carlson’s merit increase.” ULP #10-80 Montana Supreme Court (1982)

09.31: Evidence - Applicability of Rules of Evidence

“[F]indings of fact can only be based on matters within the four corners of the record, including testimony of witnesses, exhibits, matters officially noticed, jurisdictional papers, etc.” UD #10C-74

“Keeping in mind that formal hearings before this Board are administrative and statutory or common law rules of evidence are not enforced, I welcome nearly any testimony or evidence that may indicate the perimeter of the existing bargaining unit.” DC #2-81

“Section 39-31-406 MCA states that the Board of Personnel Appeals is not bound by the rules of evidence prevailing in the courts. Rule 24.26.201 ARM states that the Board of Personnel Appeals adopts the model rules proposed by the Attorney General. The Attorney General’s Model Rule 13, 1.3.217 ARM, states that in all contested cases discovery shall be available to the parties in accordance with rule 26, 28 through 37 of the Montana Rules of Civil Procedure. Therefore, a conclusion that the Board of Personnel Appeals is governed by Rule 32(a) of the Montana Rules of Civil Procedure is in order.” ULP #9-83

09.32: Evidence - Burden of Proof [See also 09.33, 71.211, and 71.517.]

“It is elementary in cases such as this that the Complainant has the burden of proof, that is the burden of producing evidence of a particular fact in issue and the burden of persuading the hearing examiner that the alleged fact is true. Findings of fact can only be based on matters within the four corners of the record....” UD #10C-74

“Once it has been proven that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that it was motivated by legitimate objectives since proof of motivation is most accessible to him.” ULP #16-78

“AFSCME must carry the burden of proving that the criteria set out in Hollywood Ceramics, under the circumstances, lead to the conclusion that the election among the Montana State Prison employees does not likely represent true employee choice.” DC #17-79

“The National Labor Relations Board in Wright Line ... reformulated the allocation of the burden of proof in such cases [of disciplining an employee based upon the employee’s union activity].... The first test is the requirement that the complainant make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer’s decision. If the first test is satisfied, the burden will shift to the employer in the second test to demonstrate that the same action would have taken place even in the absence of the protected conduct.” ULP #15-83

See also ULPs #11-79 and #38-81.

09.33: Evidence - Weight and Sufficiency [See also 09.32, 71.211, and 71.517.]

“The hearing examiner cannot assume that mere allegations are fact even though he may have more than a healthy suspicion that the allegations are probably true.” UD #10C-74

“The Complainant’s case must be established by a preponderance of the evidence before an unfair labor practice may be found. Section 39-31-406, MCA.” ULP #28-76 Montana Supreme Court (1979)

“‘Substantial evidence has been defined by [the Montana Supreme] Court as such as will convince reasonable men and on which such may not reasonably differ as to whether it establishes the plaintiff’s case, and if all reasonable men must conclude that evidence does not establish such case, then it is not substantial evidence. The evidence may be inherently weak and still be

deemed “substantial,” and one witness may be sufficient to establish the preponderance of a case.’ [Olson vs. West Fork Properties, Inc., Mont. , 554 P.2d 821 (1976)]” ULP #20-78

“New facts introduced in the briefs that have not been subject to or have not had an opportunity to be subject to cross examination will not be given weight....” ULP #20-78

See also ULP #11-79.

09.36: Evidence - Witnesses

“ ‘Under the Montana Rules of Civil Procedure the use of depositions is carefully prescribed in Rule 32(a). They may be used to impeach the testimony of the deponent.... They may be used if the person deposed was “at the time of taking the deposition” one of a specified list of agents of a party.... Finally the deposition may be used if the witness is dead, more than 100 miles from the place of hearing, or unable to testify because of age, illness, infirmity or imprisonment.... There is absolutely no excuse for admission of an unsigned deposition from a person easily available for testimony’.” ULP #9-83

09.362: Evidence - Witnesses - Credibility

“ ‘A resolution of the ... issues calls for an objective determination of the veracity of the two witnesses whose testimony is highly conflicting on the crucial questions.... I am ... compelled to consider the relationship of the parties, one to the other, the readily responsive, nonselective, nonexaggerating, consistent and straightforward manner in which they testified, the reasonableness of efforts made by each to bring essential witnesses and appropriate documentary evidence before the Court, as well as how such testimony or other evidence relates to the logical consistency of all of the evidence of record and the sequence of events as they transpired.’ [F.S. Willey Co., Inc. and William, 224 NLRB No. 151 (1976), p.11]” ULP #18-82

09.374: Evidence - Special Kinds of Evidence - Circumstantial

“Counsel for both parties agree that the decision in this matter may be based on circumstantial evidence and they both cite Exchange State Bank of Glendive v. Occident Elevator Co.... as authority for that principle and for the standard by which the quantum of evidence should be measured.... The Court in Exchange held: ‘The solution of any issue in a civil case may rest entirely on circumstantial evidence.... All that is required is that the evidence shall produce moral certainty in an unprejudiced mind.... In other words, when it furnishes support for the Plaintiff’s theory of the case, and thus tends to exclude any other theory, it is sufficient to sustain a verdict or decision’.” ULP #6-84

09.391: Evidence - Admissibility - Parol

See Butte Teachers’ Union v. Butte School District (1982).

09.411: Res Judicata - Prior Decisions - Board

See ULPs #13-76, #5-80, #7-80, #34-80, #39-80, and #22-81 and UDs #6-79, #5-80, and #14-80.

09.412: Res Judicata - Prior Decisions - Court

The Board of Personnel Appeals specifically rejected “the use of public sector cases as precedent in this case” because Montana’s Public Employees Collective Bargaining Act “is modeled almost identically after the federal Act, the Labor-Management Relations Act.... For this reason and other cogent reasons, the Montana Supreme Court, when called upon to interpret ... 39-31-101 through 39-31-409, MCA, has consistently turned to National Labor Relations Board (NLRB) precedent for guidance.... [T]he public sector collective bargaining acts of other states are not always similar to Montana’s Act....

[T]he use of another state's precedent in one case becomes precedent in itself to continue using that other state's precedent for other labor matters.... There ... [also] is the problem of which state do we follow.... It is thus seen that the states themselves are at odds over the issue before us in this case." ULP #37-81

See also ULPs #13-76, #20-78, #11-79, #7-80, #19-80, #34-80, #39-80, #16-81, and #38-81 and ULP #28-76 Montana District Court (1978) and Supreme Court (1979).

09.413: Res Judicata - Prior Decisions - Other Tribunals

"We held in *State Department of Highways v. Public Employees Craft Council* (1974), 165 Mont. 349, 529 P.2d 785, and in *Local 2390 of American Federation, Etc., v. City of Billings* (1976), 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753, that it is appropriate for the Board of Personnel Appeals to consider NLRB precedents in interpreting and administering the Public Employees Collective Bargaining Act." ULP #20-78 Montana Supreme Court (1979)

"[T]he Labor Management Relations Act represents broad national trends in labor relations law, not the result of political decision making in one state which might have no bearing on Montana's Act.... This Board believes that the wording of Montana's Act reflects a legislative intent to follow those broad national trends.... [T]he members of the Board of Personnel Appeals believe that the National Labor Relations Board and the federal courts reviewing the National Labor Relations Board constitute a better area of law to draw precedent from because of the federal sector's (a) greater experience (since 1936); (b) greater number of cases (the LMRA is national of course); and (c) greater consistency, to the extent possible with the continuing development of labor law, as in all areas of law." ULP #37-81

The Montana Supreme Court looks to the construction federal courts have placed on the National Labor Relations Act to aid it in interpreting the Collective Bargaining for Public Employees Act. *Small v. McRae* (1982)

"Federal court decisions that affirm National Labor Relations Board rulings do so because the rulings are based on substantial evidence and are in accord with the N.L.R.B.'s statutory mandate. Should the N.L.R.B. determine at some future time that, in view of changing factual conditions, a new ruling should be implemented, that policy will be measured on judicial review by the same or similar principles of substantial evidence and statutory compliance that were employed in previous judicial decisions, not by whether the new ruling is in accord with the previous court decisions.... We will adhere to the same principles when evaluating appeals of future Board decisions." ULP #3-79 Montana Supreme Court (1984)

See also UD's #21-77 and #6-79; ULPs #20-78, #2-79, #3-79, #11-79, #5-80, #7-80, #19-80, #34-80, #39-80, #16-81, #30-81, and #29-84; and ULP #24-77 Montana Supreme Court (1981) and District Court (1985), ULP #3-79 Montana Supreme Court (1982), *Department of Highways v. Public Employees Craft Council* (1974) and *Ford v. University of Montana* (1979).

09.43: Res Judicata - Application

See ULPs #20-78 and #11-79.

09.6: Waiver [See also 21.9, 32.18, 35.14, and 72.590]

"In collective bargaining, a union may waive a bargaining right that is protected by the National Labor Relations Act." ULP #9-83

09.613: Waiver - Form - Implied

"[W]aivers of rights may not be inferred, they must be clearly and unequivocally expressed. Here, there is far more confusion than certainty....

There was no meeting of minds, no clear agreement, no intentional or conscious waiver of rights. Thus I conclude that even if the Montana Public Employees Association could have waived the statutory and regulatory requirements for new unit certification, it did not.” DC #22-77 District Court (1978)

See also ULP #31-82, *Reiter v. Yellowstone County* (1981), and *Welsh v. Great Falls* (1984).

09.62: Waiver - Waiver of Board Procedures

“A law established for a public reason cannot be contravened by a private agreement (Section 49-105).... I hold, then, that the procedural requirements of Section 59-1606, and ARM Section 24.26.501 through 24.26.516 and 24.26.530 through 24.26.534 insofar as they may be legally propounded pursuant to the statute, cannot be waived either by counsel or by the Board of Personnel Appeals or its agents, and that they could not be effectively waived or diminished in any way in this case.” DC #22-77 District Court (1978)

“Because the court in Local 743 ... states public interest prevents the waiver of unfair labor practice charges and because the court in *Neiss* ... states law established for a public reason cannot be compromised, I cannot see why the Board of Personnel Appeals should not adopt the teachings of the court in Local 743 ... when addressing a written unfair labor practice waiver.... Then, it should follow that if the Board of Personnel Appeals applies the above standard to a written waiver, the Board of Personnel Appeals should have a standard that a waiver by inaction is also useless.” ULP #31-82

The president of a Montana Education Association local has the authority to waive strict compliance with certain filing and posting procedural rules in order to expedite an election of exclusive representative of the same local. The authority to waive strict compliance with those rules does not necessarily have to come from the exact same person who had previously filed a formal document in the proceeding. DC #4-83

09.64: Waiver - Right to Bargain, Waiver by Contract [See also 21.9, 72.590, and 73.478.]

“[I]t is elementary that a law established for a public reason cannot be compromised by private agreement....’ [State of Montana ex rel., *Neiss v. District Court of the Thirteenth Judicial District*, 511 P.2d 979, 1973]” ULP #31-82

“The National Labor Relations Board cases teach that any waiver of the statutory right to bargain over a mandatory subject of bargaining must be in ‘clear and unmistakable language.’ ... [T]he National Labor Relations Board has been reluctant to infer a waiver.” ULP #9-83

09.651: Waiver - Right to Bargain, Waiver by Conduct - Failure to Request Bargaining
See *Butte Teachers’ Union v. Butte School District* (1982).

09.71: Estoppel - Elements of Estoppel
See *Reiter v. Yellowstone County* (1981).

11. PUBLIC EMPLOYER

11.11: Definition

“To properly define ‘public employer’ we must appreciate the economic realities sought by the Collective Bargaining for Public Employees Act and the Library Systems Act Sections 44-2112, et seq. RCM 1947, and reconcile any differences if possible.” *AFSCME Local 2390 v. Billings* (1976)

“Public employer is defined in section 59-1602(1), RCM 1947.” ULP #11-78

“Section 39-31-103(1) ... [states] that ‘any representative or agent designated by the public employer to act in its interest in dealing with public employees’ will be considered a public employer.” UD #18-78

“Our law defines public employer as: ‘... the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.’ 39-31-103(1).” UC #4-79

“Section 39-31-103(1) MCA defines public employer as the state of Montana or any political subdivision thereof.... An individual employed at the [Fort Peck] Community College is an employee of the tribe.... This Board does not have jurisdiction in this matter as the Complainant is not a public employee ... and the Defendant is not a public employer....” ULP #50-79

11.12: Determination

“The economic realities show that the City, not the Board of Library trustees, ultimately provides the salaries and wages of the library personnel. The City has a substantial legitimate interest in the operation of the library, which qualifies the City as the ‘public employer’ of the Billings City Library personnel.... [The Board of Trustees of the Library are] merely ... ‘supervisory employees’ as defined in Section 59-1602(3), RCM 1947.” AFSCME Local 2390 v. Billings (1976). See also ULP #11-78.

“[T]he NLRB emphasizes three factors in distinguishing the employee from the independent contractor: (1) the entrepreneurial aspects of the dealer’s business, including the ‘right to control’, (2) the risk of loss and opportunity for profit, and (3) the dealer’s proprietary interest in his dealership.... KAL Leasing, Inc., is an independent contractor. The School District is not the employer of KAL Leasing, Inc., or its employees.” UD #18-78

“There is no clear delineation in our Act of who the public employer is for purposes of collective bargaining for the probation officers. Therefore, I believe it is necessary that this Board look to the aims which the Legislature sought to achieve when it enacted the law.” UC #4-79

“[T]he lack of ability to effectively negotiate with the employees indicates that the Treasurer is not the public employer and the same principle applies to an alleged public employer whether he is elected, appointed or employed.” ULP #19-79

Under the “right to control” standard, “after determining whether a company meets the definition of employer, the National Labor Relations Board goes on to determine whether it has sufficient control over the employment conditions of its employees to enable it to bargain with a labor organization.” UD #6-84

11.13: Joint Public Employer

“I will not order joint employers ... because this would add to the sources of strife and this would add to the proliferation of small single office bargaining units.... A joint employer would also subtract from the theory of one consistent overall administration of county governmental affairs.... The Cascade County Treasurer is a supervisory employee.” ULP #19-79

“Applying the “right to control” standard adopted by the National Labor Relations Board we can only conclude that the Great Falls Transit District and Transit Management of Great Falls are joint employers.” UD #6-84

11.16: Successor Employer [See also 41.8, 46.15, 72.582, and 73.471.]

“[T]he labor agreement is binding on the Montana Public Employees Association and Cascade County Commissioners even though some of the Commissioners and some of the supervisory employees may have changed.” ULP #19-79

11.22: Political Entities - County

“[T]he Cascade County Commissioners have the power by way of a labor agreement to set forth how the County Treasurer is to exercise his supervisory powers.” ULP #19-79

11.31: Agency - Authority [See also 09.11, 41.22, and 72.530.]

See ULP #17-77.

11.32: Agency - Board

“In AFSCME Local 2390 v. City of Billings, ... the Montana Supreme Court held that the Library board of trustees was not a wholly independent and autonomous entity separate and apart from the local governing body. The Board of Trustees was granted independent powers to manage and operate the library, but they were an adjunct of local government, the City of Billings.” UC #4-79

11.4: Courts

“[C]onsidering the ‘economic realities’ of the situation, and applying the definition broadly as the Supreme Court directed should be done, then no other conclusion can be reached but that the City of Missoula is the employer of Eva Felde and not Judge Clark...” ULP #11-78

“It is abundantly apparent that the District Courts are not adjuncts of Montana County government; however, I do not believe such relationships must exist as a prerequisite to a determination that the policy of the Act is best promoted by declaring the County Commissioners the employer for purposes of collective bargaining. Such policy does not infringe upon the judiciary’s independence.” UC #4-79

11.52: Educational Institutions - Community College

See Rippey v. Flathead Valley Community College (1984).

11.55: Educational Institutions - Board of Regents

See Rippey v. Flathead Valley Community College (1984).

11.7: Rights and Responsibilities

The Montana Supreme Court concluded “that reassignment [of an administrator back to classroom teaching], without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws.” Sorlie v. School District (1983)

“No insurmountable difficulties for labor, management or the judiciary should arise if the County is the public employer for collective bargaining purposes. Since the inception of the subject unit the Commissioners representatives have negotiated for all the employees in the existing unit including the deputy probation officers.” UC #4-79

15. PUBLIC EMPLOYEES**15.01: Definitions**

“The definition of ‘public employee’ within the meaning of this section will be determined broadly in doubtful situations. In this case, the city who had entered a collective bargaining agreement with city employees is the ‘pub-

lic employer' for the purposes of this chapter, not the library board of trustees." AFSCME Local 2390 v. Billings (1976)

"Section 39-31-103(2) MCA defines 'public employee' for purposes of the Act as: '... a person employed by a public employer in any capacity except elected officials, persons directly appointed by the governor, supervisory employees and management officials, ... or members of any state board or commission who serve the state intermittently, school district clerks and school administrators, registered professional nurses performing service for health care facilities, professional engineers and engineers-in-training, and includes any individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action'." UC #4-79

See also ULP #50-79.

15.1: Educational Employees

An appropriate bargaining unit was determined to be "all non-academic employees excluding the Food Service employees, carpenters, painters, stationary engineers, and those specifically exempted by statute." UD #29-74

Employees at a single unit of the Montana University System are an appropriate bargaining unit. UD #66S-74

See UD #22-77.

15.111: Educational Employees - Administrators - Department Heads and Chairpersons

See UDs #67S-74 and #21-77.

15.113: Educational Employees - Administrators - Deans, Principals and Vice Principals

"The bargaining unit in question here is comprised of 17 principals and assistant principals, 12 program directors and the assistant superintendent employed by School District No. 1, Butte, Silver-Bow County. The Superintendent and the Director of Business Affairs are not in a bargaining unit." UC #2-83

15.12: Educational Employees - Professionals [See also 34.16 and 34.4.]

"The petitions ... were filed by the Committee for Freedom of Determination requesting clarification and modification of the unit certified by this Board as 'all nonacademic employees at the University of Montana'." DR #2-76

See also UD #9-79.

15.121: Educational Employees - Professionals - Teachers

"It is hereby determined that the word 'teachers' as it appears in Section 7(1) of H.B. 834 refers to those persons who hold or have held a valid Montana teaching certificate and to those not currently certified who have completed a four-year teacher education program, so long as they are employed in an education program at one of the Montana state institutions." ["H.B. 834 created a compensation plan for state employees for the 1979 biennium, amending Section 11-1024, R.C.M. 1947. Section 7(1) of the bill exempted from the bill's procedure for increasing compensation for state employees 'those plans negotiated with the blue collar crafts and teachers in accordance with provisions of Title 59, Chapter 16'."] DR #1-77

See also UDs #54-74, #1-75, #19-75, #22-75, #26-75, #8-76, #14-76, #9-79, and #22-81; ULP #20-78; and ULP #37-81 Montana Supreme Court (1985) and Savage Education Association v. Richland County School District (1984).

15.122: Educational Employees - Professionals - Professors

Faculty at Northern Montana College determined to be an appropriate bargaining unit although system-wide unit might be more appropriate. Unit established in response to wishes of all three labor organizations and faculty. UD #55S-74. See also UD #66S-74.

Appropriate unit determined to be "all full and half-time teaching faculty holding academic rank; excluding deans, vice-presidents, and the president of the college." UD #56S-74

See also UDs #60S-74, #67S-74, #11-76 and #21-77; UC #8-79; Rippey v. Flathead Valley Community College (1984).

15.123: Educational Employees - Professionals - Counsellors

See UDs #44-74 and #60S-74.

15.124: Educational Employees - Professionals - Psychologists

See UD #9-79.

15.125: Educational Employees - Professionals - Librarians

See UDs #60S-74, #67S-74, and #21-77; UM #1-75; and UC #6-82.

15.127: Educational Employees - Professionals - Coaches

See UD #60S-74; UC #8-79; and ULP #2-82.

15.128: Educational Employees - Professionals - Substitute Teachers

See UM #1-75.

15.134: Educational Employees - Research and Teaching Assistants - Aides

See UDs #13-76 and #7-84.

15.14: Educational Employees - Paraprofessionals

See UDs #13-76 [related to instructional or service aides] and #1-80 [related to tutors].

15.15: Educational Employees - School Bus Drivers

Billings school bus drivers employed by KAL Leasing, Inc., are not public employees. UD #18-78

Billings school bus drivers employed by B.W. Jones and Sons, Inc., are not public employees. ULP #29-76

See also UDs #51-74, #33-75, #6-79, and #23-80.

15.17: Educational Employees - Service and Maintenance [See also 34.18.]

See UDs #12-74, #19-74, #27-74, #30-74, #44-74, #51-74, #61-74, #64S-74, #33-75, #12-76, #6-79, #29-79, #23-80, and #7-84.

15.171: Educational Employees - Service and Maintenance - Custodians

See UDs #17-74, #8-77, #29-79, and #6-81 and ULP #18-82.

15.172: Educational Employees - Service and Maintenance - Cafeteria Workers

See UDs #8-77, #1-80, and #7-80.

15.18: Educational Employees - Clerical and Office [See also 34.15.]

See UDs #1-74, #27-74, #29-74, #30-74, #35-74, #44-74, #62-74, #64S-74, #12-76, #13-76, #14-76, #18-77, #6-79, #24-79, #1-80, #7-80, and #7-84.

15.19: Educational Employees - Evening School and Extension Employees

See UD #18-74.

- 15.2: Hospital and Health Care Service Employees**
See UD#s #5-74 and #6-77.
- 15.211: Hospital and Health Care Service Employees - Professional - Registered Nurses**
See UC #3-79.
- 15.212: Hospital and Health Care Service Employees - Professional - Licensed Practical Nurses**
See UD#s #5-74, #6-77, and #24-78.
- 15.23: Hospital and Health Care Service Employees - Non-Professional Staff**
See UD#s #5-74 and #63S-74.
- 15.233: Hospital and Health Care Service Employees - Non-Professional Staff - Nurses Aides**
See UD#s #15-76 and #24-78; UC #2-84; and ULP #29-79.
- 15.24: Hospital and Health Care Service Employees - Therapists**
See UC #2-84.
- 15.251: Hospital and Health Care Service Employees - Service and Maintenance - Kitchen and Cafeteria**
See UD #5-80.
- 15.26: Hospital and Health Care Service Employees - Office Employees [See also 34.15.]**
See UD #13-74.
- 15.261: Hospital and Health Care Service Employees - Office Employees - Clerical**
See UD #1-79.
- 15.27: Hospital and Health Care Service Employees - Other Professional Employees [See also 34.16 and 34.4.]**
“Supporting staff” ruled to be only those employees whose primary function is the instruction of residents at Boulder River School and Hospital. This ruling excludes all but speech therapists and teachers. Teachers of staff not included. UD #13-74
See also UD #11-77 and UC #2-84.
- 15.31: Administrative Service Employees - State**
See UCs #6-79 and #6-80 DC #17-79.
- 15.32: Administrative Service Employees - County**
See UD#s #52-74 and #1-82; UC #4-79 and DC #22-77.
- 15.33: Administrative Service Employees - Municipal**
See UD#s #22-74, #40-74, #52-74, #18-76, #1-79, and #8-83; UCs #4-80 and #3-83 and DCs #22-77 and #10-79.
- 15.34: Administrative Service Employees - Court**
See ULP #11-78.
- 15.413: Uniformed Services - Police - Municipal County Sheriff**
See UD#s #33-74 and #32-79 and ULP #18-83 District Court (1985).

15.414: Uniformed Services - Police - Municipal Police

See UD #43-74, #65C-74, #36-75, #24-76, #22-78, #4-79, #7-79, and #26-79; UC #4-80; DC #6-78; and *Great Falls and Raynes v. Johnson* (1985) and *In the Matter of Raynes* (1985).

15.416: Uniformed Services - Police - Municipal Special Police

See UD #34-75 [related to all employees employed as policemen and sergeant by the Great Falls International Airport Authority].

15.417: Uniformed Services - Police - State Police

See UD #16-74.

15.43: Uniformed Services - Firefighters

See UCs #1-77 and #4-80; ULP #19-78; and *Welsh v. Great Falls* (1984) and *Billings Fire Fighters Local 521 v. Billings* (1985).

15.45: Uniformed Services - Federally-Funded Employees [See also 34.35.]

Comprehensive Employment and Training Act employees are covered by the same collective bargaining agreements as are regular employees. See UD #26-79

15.5: Transit and Transportation Employees

See UC #7-80.

15.51: Transit and Transportation Employees - Operators

See UD #3-74 and #6-84.

15.511: Transit and Transportation Employees - Operators - Bus Drivers

See DC #5-82.

15.53: Transit and Transportation Employees - Service and Maintenance [See also 34.18.]

See UD #6-84 and DC #5-82.

15.6: Public Works, Utilities, and Sanitation Employees

Employees of an irrigation district are deemed "public employees" and as such constitute an appropriate bargaining unit. UD #11-74

See also UD #9-74, #10C-74, #20-74, #28-74, #32-74, #37-74, #39-74, #50-74, #57-74, #5-77, #17-77, and #2-80; UCs #1-81, #3-83, #5-83; DC #5-75; EC #6-74; and DR #1-76.

15.63: Public Works, Utilities, and Sanitation Employees - Office and Clerical [See also 34.15.]

See UM #2-75.

15.7: Other Professional Employees [See also 34.16.]

See UD #1-79, #18-79, #27-79, and #14-80.

15.8: Parks and Recreation Employees

Bargaining unit determined to include all Fish and Game Wardens below the rank of sergeant. UD #53-74

See also UD #9-83.

15.82: Parks and Recreation Employees - Rangers

See *Hutchin v. Department of Fish, Wildlife & Parks* (1984).

16. EMPLOYEES WITH LIMITED STATUTORY PROTECTION**16.1: Managerial Employees [See also 34.19.]**

“The National Labor Relations Act does not specifically exclude management officials from its coverage. However, the National Labor Relations Board has developed a body of case law which does provide for such an exclusion.” UC #1-77

“‘The rationale for this policy [of excluding managerial employees], though unarticulated, seems to be the reasonable belief that Congress intended to exclude from the protection of the Act those who comprised “management” or were allied with it on the theory that they were the ones from whom the workers needed protection.’ [NLRB v. Retail Clerks International Association, 366 F.2d at 645, 62 LRRM at 2839]” UD #14-80

See also UDs #22-77, #1-79, and #4-79 and UM #2-75.

16.11: Managerial Employees - Definition

“After reviewing National Labor Relations Board decisions on the point, an appeals court decided that the National Labor Relations Board seems to use two tests in determining who is a managerial employee. He is either (1) one who, while not a supervisor, is so closely related to or aligned with management as to present a potential conflict of interest between employer and employees; or (2) one who formulates, determines, or effectuates an employer’s policies, and who has discretion in the performance of his job, but not if the discretion must conform to the employer’s established policies.” UM #2-75

“Section 59-1602(2), R.C.M. 1947, excludes ‘management officials’ from the coverage of Montana’s Collective Bargaining for Public Employees Act. Section 59-1602(4) defines that term as: ‘... representatives of management having the authority to act for the agency on any matters relating to the implementation of agency policy’.” UC #1-77

Managerial employees are “those who formulate and effectuate management policies by expressing and making operative the employer’s decisions and those who have discretion in the performance of their jobs independent of their employer’s established policy. The [Supreme] Court made it clear that those who perform routine work are not excluded. [NLRB v. Bell Aerospace, 416 U.S. 267, 85 LRRM 2945]” ULP #29-82. See also UD #14-80

“This Board has consistently construed this definition very narrowly and has only once ruled that a group of employees were excluded from the Act’s coverage due to managerial status [that is, in UD #9-74--Field Project Managers].” UC #3-83

See also UDs #9-74 and #9-83.

16.12: Managerial Employees - Indicia of Authority [See also 16.32 and 33.41.]

“The Board has never attempted a ‘precise definition’ of the term ‘managerial employee’. Nevertheless in determining whether individuals are managerial employees a guideline has been whether certain non-supervisory employees have a sufficient community of interest with the general group of employees constituting the bulk of a unit so that they may appropriately be considered a part thereof. In other words, where the interests of certain employees seem to lie more with those persons who formulate, determine, and oversee agency policy than with those in the proposed unit who merely carry out the resultant policy the Board tends to exclude them from the unit.” UM #2-75

“This Board has consistently construed this definition very narrowly and has only once ruled that a group of employees were excluded from the Act’s coverage due to managerial status. That group of employees, the Field Project Managers in the Highway Department, had the authority to act for the agency

on all matters relating to the construction of assigned projects. They were responsible for the administration and satisfactory completion of projects; they had the authority to reject defective materials, to suspend any work that was being improperly performed, and to cause unacceptable and unauthorized work to be remedied; their actions in rejecting materials or suspending work were taken on behalf of the agency and were of an independent nature which required no direct orders or commands from supervisors. (Decision In the Matter of the Field Project Managers Unit Determination, UD #9-74)." UC #1-77

"In determining whether or not the positions in question meet the statutory definition of 'management official,' the following factors must be considered: (1) the nature and effectiveness of any input into departmental policy or managerial decisions; (2) the types of any 'policy' or 'management' decisions made; (3) the type and amount of direction received, either in the form of verbal instruction or established rules, regulations, or policies; (4) the nature and degree of constraints and reviews affecting any 'policy' or 'managerial' decisions made; and (5) the specific areas of expertise in which 'policy' or 'managerial' decisions or recommendations may be made." UC #1-77

"[M]anagerial status ... is reserved for those executive-type positions, those who are closely aligned with management as true representatives of management.' [General Dynamics Corporation, 213 NLRB 124, 87 LRRM 1705 (1974)]" UD #14-80

"The absence of discretionary authority coupled with the fact that she did not formulate policy serve to preclude the exclusion of her old position [head teacher] based on the management official definition. General Dynamics Corporation [supra]" ULP #29-82

See also UD #9-74 and #9-83 and UC #3-83.

16.2: Confidential Employees

"The 1979 Legislature amended the Collective Bargaining for Public Employees Act to exclude persons found by this Board to be confidential labor relations employees." UC #4-79

"Although the NLRA does not exclude confidential employees, the NLRB has a long established policy, through its decisions, of excluding such personnel." UD #18-79

See UD #22-77 and #1-79.

16.21: Confidential Employees - Definition

"Montana's Collective Bargaining Act for Public Employees excludes confidential employees from its coverage.... [A confidential employee is] defined as 'any person found by the Board [of Personnel Appeals] to be a confidential labor relations employee...'" UD #24-79

"The National Labor Relations Board defined confidential employee 'so as to embrace only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations'." UD #8-83

16.22: Confidential Employees - Standards [See also 33.43.]

Accounting Clerk III and Clerk Stenographer II were included in the unit on the grounds that access to confidential information is not grounds for exclusion. UD #25-74. See also UD #6-74.

Exclusion of classified personnel in the President's Office and the Personnel Office on the grounds of handling confidential material is not allowed. Employees in these offices are included in the bargaining unit consisting of all non-academic employees. UD #30-74

"As was pointed out in the hearing examiner's decision in ... UD #18-79, ... the criteria used by the Board of Personnel Appeals to determine whether one is a confidential labor relations employee should be those set forth in Siemens Corp., 224 NLRB 216, 92 LRRM 1455 (1976). There the National Labor Relations Board held that if the employee acts in a confidential capacity, during the normal course of duties, to a person who is involved in formulating, determining and effectuating the employer's labor relations policy, he or she should be excluded from any appropriate unit. Prior to Siemens the National Labor Relations Board had held to a stricter definition of confidential employee." UC #4-79

"Access to information that may be used during labor negotiations or responsibility for compiling information that might be related to labor relations is not sufficient to exclude an employee as confidential." UD #24-79

"The test for determining confidential employee status is two pronged.... To be excluded ... the management official whom she/he assists must be involved in formulating, determining and effectuating labor relations policies *and* the employee must have access to confidential labor relations information in the normal course of employment." UD #27-79. See also UD #8-83.

"Generally, the National Labor Relations Board has identified those persons who 'formulate, determine and effectuate management policies in the field of labor relations' as people who actually sit at the bargaining table." UC #6-79

"If the superior cannot pass the test neither can an assistant, i.e., there can be no confidential labor relations employee unless the boss passes muster." UD #1-80

On "one hand the employee or position occupied by the employee must act, or have the responsibility of acting, in a confidential capacity.... [On the] other hand the superior must be involved in labor relations to the degree suggested previously." UD #7-80

"[C]onfidential exclusions ... should be construed narrowly.... [They] should not apply unless the superior has significant involvement in formulating ... and then only if the employee's primary duty is to assist such superior." UD #7-80

See also UDs #18-76, #6-77, #22-77, #1-79, #4-79, and #1-82.

16.3: Supervisors [See also 34.19.]

"[T]here is no disability *per se* occasioned by supervisory employees belonging to a union and being represented by them for collective bargaining.... Even the federal law which denies authority to the NLRB, either to include supervisors in bargaining units with other employees or to establish units composed entirely of supervisory personnel, allows supervisors to organize even though they are not covered by the Act and employers are not forbidden to engage in voluntary bargaining with the organizations that represent them.... No such restrictions existed in state law at the time of the certification. Quite the contrary, the state formerly recognized and entered into an agreement with the Union covering these employees...." ULP #2-73

"Whether or not Benton was a supervisory employee is not a question that I [the Hearing Examiner] can entertain. That question was decided by the agent of the Board of Personnel Appeals who conducted the Union election...." ULP #3-73

Supervisory personnel are allowed to remain in an existing grandfathered unit if they pass the Board of Personnel Appeals' two-part test which determines (1) the nature of each position and (2) whether including the supervisory positions would create an actual substantial conflict. UC #1-77 Montana Supreme Court (1982)

“The issue, as raised by the union, is whether this Board should allow ballot challenges, based on the supervisory exclusionary language of 39-31-103 MCA, at a decertification election where the employee or position being challenged is included in the existing unit.... Questions of the propriety of the unit do not belong in such proceedings and the Board, under its own rules, is not authorized to deal with it as part of the proceedings.” DC #11-79

See also UD #22-77, #1-79, and #4-79.

16.31: Supervisors - Definition

“ ‘Supervisory employee’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” ULP #3-73

See also UD #8-83; UCs #1-77, #3-79, #7-80, #6-82, and #2-84; and ULP #11-78.

16.32: Supervisors - Standards [See also 16.12 and 33.42.]

“This Board considers the decision of who is a supervisor and who isn’t the concern of the employer, the bargaining unit representative, and this Board. We do not consider the individual employee to have the proper standing to assert whether or not he is a supervisor.” DR #2-76

Lack of authority to hire or discharge personnel or to effectively recommend such action is a basis for *not excluding* Youth Camp Counsellor III and Plan Supervisor L from the unit. UD #26-74

Responsibility for making purchases under a prescribed budget which employee did not help formulate is not grounds for exclusion from the unit. Neither is supervision of one other member of the bargaining unit when both are performing identical functions. UD #61-74

Directors and/or coordinators who engage in more than *infrequent* supervisory responsibilities are excluded from the bargaining unit. (Reference is made to the Adelphi University decision [195 NLRB 644] as not being applicable.) UD #66S-74

There is no basis for exclusion of positions that are more lead worker positions than supervisory. UD #18-76

“[T]he definition of a supervisor as outlined in Section 59-1602(3) ... [includes]: A. ... have the authority in the interest of the employer to perform the actions: (1) transfer; (2) temporarily suspend; (3) assign; (4) discipline; (5) direct; and (6) adjust grievances.... B. ... effectively recommend through the use of independent judgment the following actions: (1) transfer; (2) suspension; (3) promotion; and (4) reward.” UD #24-76

Section 59-1602(3) does *not* indicate that a supervisor must have all specific responsibilities indicated. UD #36-75.

“The National Labor Relations Act’s definition of the term ‘supervisor’ is nearly identical to Montana’s. The National Labor Relations Board ... has consistently held that this definition ‘is written in the disjunctive, and so just the possession of any one of the listed powers is sufficient to cause the possessor to be classified as a supervisor...’” UC #1-77. See also UD #9-83 and UC #3-83.

“The National Labor Relations Board holds that possession of one of the listed powers is sufficient to classify the individual as a supervisor.... In addition to actually exercising one or more of the enumerated powers, a person may be excluded as a supervisor if he can effectively recommend a listed

power. However, whether in actual performance or in making a recommendation, to be excluded as a supervisor, one must exercise independent judgment....” UC #6-80 See also UC #7-80.

“In determining supervisory status, the responsibilities of hiring, transferring, etc. are considered as a whole. That is, to be determined supervisory an employee must exercise a number of these responsibilities.” UC #3-79 See also UC #2-84.

“[T]he specific question at hand [is] are the positions in question supervisory and/or managerial and, if so, does their inclusion in the bargaining unit create actual substantial conflict which results in compromising the interests of any party to its detriment.... I have relied most heavily on evidence pertaining to duties and responsibilities actually incumbent upon the Specialty Officers, Battalion Chiefs, and Captains, and to evidence indicative of conflict caused by the current composition of the bargaining unit. Proportionately less weight has been given to evidence regarding such factors as differences in uniforms, use of vehicles, training, desires of employees, etc., matters which might weigh more heavily were this a new unit determination rather than a clarification of an already existing bargaining unit.” UC #1-77

“‘[W]hether or not he may properly continue to be included in the unit in the future will depend upon the amount of time he regularly spends in the performance of supervisory duties.’ [Adelphi University, 195 NLRB 644, 79 LRRM 1552 (1972)] UD #21-77

“Determination of whether or not departmental chairs are to be included in the unit must be made on the present duties of the position, not on speculation of what those duties will be at some future date.” UD #21-77

“The direction [the police Captain and Sergeants] give men on shift appears to be more the type given by a lead worker than that given by a supervisor.... The amount of time the Captain and Sergeants spend directing men on shift, coupled with their authority to suspend, is not sufficient to cause them to be excluded from the unit as supervisors.” UD #22-78

The approach used by the National Labor Relations Board for “determining supervisory status of registered nurses will be adopted here. That is, the traditional indices of supervision will be weighted to see whether they are being exercised in the interest of the employer or in the interest of the treatment of the patients.” UC #3-79 See also UC #2-84.

“Exercising independent judgment is a key factor in determining if an employee is supervisory.” UD #7-79

“[T]he Cascade County Treasurer is not separate and autonomous and ... the Cascade County Treasurer cannot effectively negotiate with his employees in the area of monetary matters.... [He has] the same initial power as set forth in the definition of supervisory employee.” ULP #19-79

“The determination of whether an individual is a supervisor under the [Montana Public Employees Collective Bargaining Act] should be made after a close examination of that person’s duties not the title or job classification.... It is a question of one’s authority to act as a representative of the employer in relation with other employees and whether one actually exercises independent judgment in making, or effectively recommending those personnel actions listed in the statute.” UD #29-79

“When the employee’s exercise of authority is routine in nature, i.e., it follows established procedures, the position should not be excluded.” UD #29-79

“What they were or were not earlier is of no consequence. If the evidence shows them to be supervisory they should be excluded; if it does not, they will remain in the unit.” UC #6-80

“This Board must look behind the appearances of certain said-to-exist authority in order to determine whether alleged supervisory personnel actually exercise substantial discretion with respect to those statutory criteria or whether they merely make routine, broadly reviewable decisions.” UD #1-80

“The NLRB has long held that an abnormal proportion of supervisors to employees should be a factor in distinguishing between true supervisors and other minor supervisory employees.” UD #29-79. See also UD #14-80.

“Although some of the duties performed ... indicate supervisory authority ... minor supervisory employees are not ‘supervisory employees’ ... but are more properly called lead workers.” UD #14-80

“In general, an employee who can effectively recommend an action is one whose word is acted on without question.” UD #23-80

“Generally, the NLRB terms positions with some leadership responsibilities ... as lead workers when the employees who do not have the authority to hire or discharge, transfer, suspend, lay-off, recall etc. also spend most of their time working alongside other employees performing the same duties.” UD #23-80

“[L]ead teacher duties and responsibilities are included in the definition of supervisory employee.... Therefore the position of lead teacher is excluded....” UD #22-81

“The head teacher is nothing more than a lead worker.... Further, there is nothing in the record to show that Ms. Howe used independent judgment in carrying out ‘supervisory’ responsibilities even if one assumed, for the sake of argument, she had the necessary authority or that she effectively recommended any of the actions.” ULP #29-82

“The National Labor Relations Board does distinguish between true supervisors and minor supervisory employees (i.e., subforemen, crew leaders, gang pushers, set-up men or straw bosses). Some of the major considerations developed by the National Labor Relations Board used to make this distinction are: (1) whether or not the employee has the independent authority to hire, fire, adjust grievances, discipline, or give raises or other benefits; (2) whether or not the employee’s exercise of authority, particularly in the areas of assignment and direction of work, is routine in nature, i.e., follows established procedures; (3) whether or not the employee exercises independent judgment, particularly in the area of directing the activities of others; (4) whether or not the employee’s recommendations regarding personnel matters are subject to independent review/investigation by a higher authority; (5) whether or not there are several layers of supervision above the employee; (6) whether or not a substantial amount of the employee’s time is spent doing work which is similar to the work of the personnel he/she allegedly supervises; and (7) whether or not a determination that the employee(s) in question were supervisory would create an unrealistic and excessively high ratio of supervisors to employees.” UC #6-82 See also UC #1-77 and UDs #7-79, #14-80, and #9-83.

“This authority must not be exercised merely in a routine or clerical way. This Board gives those duties of hiring, discharging, transferring, suspending, laying off, and recalling workers the most weight in making the determination of supervisory status. The term effective recommendation is open to various interpretations, but in general, an employee who can effectively recommend an action is one whose word is acted on without question.” UD #8-83

“The status of supervisory employees is not to be construed so broadly that persons are denied employee rights which the statute was designed to protect.” UD #9-83

“For supervisory status to exist, the position must substantially identify the employee with management.... An employee may have potential powers,

but theoretical or paper power will not make him a supervisor. Some kinship to management, some empathic relationship between employer and employee must exist before the employee becomes a supervisor for the employer.” UD #9-83

“[A] position’s duties, not its title, salary, or minimum qualifications, are determinative of its eligibility for bargaining unit status.” UC #5-83

“It is the function rather than the label [of the position] that is significant.... Categorizing employees as supervisory for purposes of classification is of little significance to a proper determination of their status.... It is the actual nature of the work being performed by the employees that is significant.” UD #9-83

“Directing and assigning work by a skilled employee to less skilled employees does not involve the use of independent judgment when it is incidental to the application of the skilled employee’s technical or professional knowledge.” UD #9-83

“It is the employee’s regular functions, not temporary or occasional service as a supervisor that is determinative of status.” UD #9-83 See also UCs #3-83 and #2-84.

“The National Labor Relations Board consistently holds that employees who spend most of their time working alongside other employees are not supervisors within the meaning of the act.” UC #2-84

“[S]pasmodic and infrequent assumption of a position of command and responsibility does not transform an otherwise rank and file worker into a ‘supervisor’.” UC #2-84 See also UD #9-83.

See also UDs #60S-74, #8-77, #17-77, #22-77, #24-78, #1-79, #26-79, and #12-81 and ULP #3-73.

16.4: Other Employees [See also 33.45.]

See UDs #54-74 and #18-79.

16.41: Other Employees - Elected and Appointed Officials

See UD #1-79 and ULPs #11-78 and #19-79.

16.42: Other Employees - Consultants

See UD #22-77.

16.43: Other Employees - Part Time Employees [See also 34.34.]

“I [the Hearing Examiner] am convinced that using 80 hours per month, or as per state statute, 20 hours per week, as the determining sole factor for deciding which employees, who work less than full time, are included in a bargaining unit would be improper.” UD #24-78

“The only real difference between the two hourly employees and the others is that they work fewer hours.” UD #7-80

See also UDs #4-74, #13-74, #21-77, #18-79, and #2-80 and UM #1-75.

16.44: Other Employees - Casual Employees [See also 34.392.]

“The NLRB has made a distinction between ‘casual’ employees who are not included in a bargaining group and ‘regular part-time’ employees who are included. However ... [one must use a] case by case basis relative to the entire employment relationship of part-time employees in order to determine the extent of a shared community of interest with full-time employees.” UD #24-78

“The National Labor Relations Board practice of including seasonal or temporary employees in the bargaining unit only if they share a sufficient

community of interest with the regular employees or if they have a reasonable expectation of reemployment from year to year will serve as guidance on this question.” UD #2-80

16.45: Other Employees - Probationary Employees [See also 34.33.]

“Upon examination of the Collective Bargaining Act for Public Employees, ... the rules of this Board relating to determining appropriate bargaining units (ARM 24.26.511) and Section 7-32-106 MCA which defines “employee” or “subordinate employee” of a police department, I cannot find that probationary employees are not eligible to belong to a collective bargaining unit.” DC #6-78

“The fact that probationary police officers are identical to regular or ‘confirmed’ police officers in all respects except for the two minor differences addressed above [a ‘slight’ increase in pay at the time of becoming confirmed and access to an appeals procedure] surely warrants their inclusion in the bargaining unit.” UD #26-79. See also UD #36-75.

See also ULP #30-79 (related to non-tenured teachers) and *Nye v. Department of Livestock* (1982).

16.46: Other Employees - Seasonal Employees [See also 34.391.]

“The National Labor Relations Board practice of including seasonal or temporary employees in the bargaining unit only if they share a sufficient community of interest with the regular employees or if they have a reasonable expectation of reemployment from year to year will serve as guidance on this question.” UD #2-80

21. EMPLOYEE RIGHTS [See also 47.3, 61.2, 62.2, 63.1, 64.2, 72.323, 72.324, 72.325, and 73.3.]

“[T]he employees’ right to organize and bargain effectively with their employer outweighs any advantage which might be found in removing them from the unit.” UC #4-79

“Members of the bargaining unit in question have honored the picket lines of other unions which have gone on strike against the District, they have gone on strike themselves, and they have filed grievances challenging actions taken by the District. There can be little doubt that such conduct might be against the wishes of the District. However, it is also conduct, which when engaged in by members of traditional bargaining units, would be protected by the Act.” UC #2-83

21.11: Definitions - Constitutional

“In Montana, the right to due process requires notice and an opportunity to be heard.” ULP #38-80 Montana Supreme Court (1986)

Prior to his discharge for physical disability, a fire fighter met with the fire chief and the operations officer and had an exit interview with the city personnel board. However, the lack of opportunity to obtain redress from either authority deprived the firefighter of his due process, since neither authority could be characterized as an impartial tribunal. *Welsh v. Great Falls* (1984)

Richland County School District did not adhere to the collective bargaining agreement’s procedures governing nontenured teachers. This constituted a denial of due process and precluded consideration of any substantive reasons the School District may have had for the termination. *Savage Education Association v. Richland County School Districts* (1984)

See also *Reiter v. Yellowstone County* (1981), *Nye v. Department of Livestock* (1982), *Jarussi v. School District 28* (1983), *Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals* (1984), *Bridger Education*

Association v. Carbon County School District No. 2 (1984), Great Falls and Raynes v. Johnson (1985), and In the Matter of Raynes (1985).

21.12: Definitions - Statutory

“The tort of wrongful discharge may apply to an at will employment situation. In fact, the theory of wrongful discharge has developed in response to the harshness of the application of the at will doctrine, under which an employment may be terminated without cause.” Nye v. Department of Livestock (1982)

See ULP #34-78, Reiter v. Yellowstone County (1981), and Jarussi v. School District 28 (1983).

21.13: Definitions - Contractual

“The committee concluded that because the Department’s grievance procedure applied to all employees, even probationary employees must be dealt with fairly.” Nye v. Department of Livestock (1982).

See also Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984).

21.2: Right to Self-Organization

“To hold that the probation officers belong in a unit of their own would, for all practical purposes, deny them their right to organize and bargain collectively. They are small in number and would be relatively ineffective as a bargaining unit.” UC #4-79

“Legislative policy in Montana protects public employees’ rights of self-organization.... Implicit in this statement of rights [Section 39-31-201] is the policy to uphold free choice in collective bargaining representation, and the Board of Personnel Appeals, in administering the collective bargaining laws for public employees, must be very sensitive to that policy. The difficulty is in finding the proper standards.” DC #17-79.

“Slim Campbell was admittedly taking the lead into looking into the employees’ rights under the collective bargaining act and circulating the materials supplied by the Board of Personnel Appeals.... Thus we can conclude that Slim Campbell’s activities, even though they were not fruitful, were protected activities within the meaning of Section 39-31-201 MCA.” ULP #2-85

21.3: Right to Form, Join or Assist Labor Organization

The employees who were excluded from the unit under consideration were not denied rights guaranteed them. “[T]hey have the same rights now which they had before. They are free to contact any labor organization concerning representation and [to initiate] proceedings necessary to be included in an appropriate unit.” UD #18-77

“The individual members have the right to have their dues deducted as long as they submit written authorization to the School District.” ULP #29-84

See also ULP #34-78.

21.5: Right to Engage in Concerted Activity [See also 61.2, 63.1, and 64.2.]

“After more than 40 years of construction by federal and state courts, ‘concerted activities’ indisputably has become a labor law term, a technical phrase which has ‘acquired a peculiar and appropriate meaning in law.’ That meaning includes strikes.” Department of Highways v. Public Employees Craft Council (1974)

“[T]he test to determine if employee’s communications are protected activities is: (1) Did the appeal to the public concern primarily working conditions? (2) Did the appeal to the public needlessly tarnish the company’s im-

age? (A) Were the assertions made in reckless disregard of the truth? (B) Were the assertions made in the spirit of loyal opposition--not out of malice or anger?" [See *NLRB v. Electrical Workers (Jefferson Standard Broadcasting Company)* 346 US 465, 33 LRRM 2183 (1953).] ULP #5-84

See ULP #19-80.

21.7: Right to Representation [See also 47.31.]

The Board of Personnel Appeals has the duty to investigate a representation petition and provide for an appropriate hearing if there is reasonable cause to believe that a question of representation exists. UD #19-75

"Under both statute and regulations one thing is clear. The board makes unit determinations and the employees, under rules laid down by the board, make representation determinations. The two processes and the roles of the board and the employees are clearly intended to be discrete under the statute, and the regulations purport to carry out that intent." DC #22-77 District Court (1978)

21.8: Right to Strike [See also 62.2.]

"[E]mployees under Montana's Collective Bargaining for Public Employees Act, Sections 59-1601 through 59-1616, RCM 1947, are nowhere prohibited from striking. Two other classes of employees--nurses and teachers--have specific restrictions or bans on their right to strike." Department of Highways v. Public Employees Craft Council (1974)

21.92: Waiver - By Employee

A discharged fire fighter's right to an impartial hearing was not waived by his failure to request such a meeting at the time of his termination because of physical disability. The City failed to advise the fire fighter of his right to a hearing and failed to present evidence that the fire fighter had independent knowledge of such a right. These factors militated against waiver as a valid defense. *Welsh v. Great Falls* (1984)

22. EMPLOYEE ORGANIZATIONS

22.1: Definition

"Petitioners take the position that the "County Option" portions of recent contracts between AFSCME, the Craft Council and the department can serve as a springboard to avoid the above, well recognized rule against partial disestablishment of an existing bargaining unit. I would find otherwise. I find no where in the statute or other authorities cited ... the distinction between a bargaining unit and a representative unit for purposes of this issue." DC #5-75

22.2: Membership

"[S]ubstance more than form governs. The all-important criterion for determining the existence of group membership is evidence, especially conduct, evincing an unequivocal intent to be bound in collective bargaining by group, rather than individual, action. Participation in group bargaining, where it is understood that the action by the group binds all members of the group, is given controlling consideration.... If the individual employer or union evinced an intent at the outset of negotiations to be bound by group action, then the individual member will be bound by group, rather than individual action." ULP #26-79

"All services as mandated by the definition [of labor organization] are provided to the Petitioners through the Craft Council or through a component of the Craft Council--Local 1023." DC #2-81

“Since the exclusive representative can only represent bargaining unit members, a person who has rights under a collective bargaining agreement negotiated between an employer and a specific exclusive representative, must be a member of the bargaining unit.” DC #8-81 District Court (1982)

See also ULP #34-78.

22.4: Jurisdiction

“Public employers have the right to recognize labor organizations for units of employees. Certification by Intervenor Board is not necessary, nor is a determination by that Board of “an appropriate unit” required under the Public Employees Collective Bargaining Act.” DC #5-75 District Court (1979)

See also DC #5-75.

22.41: Jurisdiction - Exclusive Representation [See also 31.]

“In consequence of the long bargaining history, the exclusive recognition granted the craft Council and the negotiation of a single labor contract, there exists only a single bargaining unit.... It is clear that the common intention of the five component unions is to be bound by group negotiations.... It is apparent that the Parties have bargained in a single, multicraft bargaining unit.” DC #2-81

“The five unions [Teamsters No. 23, Operators, Machinists, Laborers, and Painters], known as the Craft Council, are the exclusive representatives.” DC #2-81

“I conclude that the City of Great Falls did not violate Sections 39-31-401(1) and (5) MCA by refusing to bargain with Plumbers Union and I.B.E.W. Union for the employees working as Plumbers and Inspectors. I conclude this because the complainants are covered by and bound by the Craft Council Contract.” ULP #26-79

See also UM #2-75.

22.52: Employee Organization Activities - Internal Affairs

“The focus of the evidence on the record centers around the elections conducted by Local 1023 during the spring and summer of 1980 which ultimately resulted in a dues increase for the Complainants... [T]he core of the factual dispute raised here is whether the elections held during 1980 were conducted in violation of the standards and safeguards called for under 39-31-206 MCA.... In the absence of rules fully setting forth exact requirements or clearer guidelines concerning the general statutory requirements of 39-31-206, MCA [related to elections], the most that I believe can be required is the following: (1) adequate notice of the election and its purpose; (2) all members in good standing must be eligible to vote; (3) voting by secret ballot by eligible voters; and (4) approval of the issue by a majority of the voters. To those specific requirements a general rule of fairness should be added.” CC #2-81

22.6: Organization Structure

“The Coalition exists as an entity in and of itself. The fact that a member of the Coalition [AAUP] has withdrawn from that entity is an internal matter which must be resolved by the Coalition....” DC #8-77

22.61: Organization Structure - Constitution and By-Laws

“[T]he bylaws of the Craft Council and of Local 1023... incorporate by reference the constitution of the international....” CC #2-81

“Under the provisions of 39-31-206 MCA the exclusive representative, Local 1023, has written bylaws which provide for and guarantee the following rights and safeguards: (a) democratic organization and procedures; (b) ade-

quate standards for the conduct of elections; (c) controls for the regulation of officers having fiduciary responsibility; and (d) sound accounting and fiscal controls, including quarterly audits.... The practices of Local 1023 conform to those rights and safeguards.” CC #2-81

22.7: Representatives

“[T]he U.S. Supreme Court styled employees’ right to organize and select representatives of their own choosing as a fundamental right.... The burden is on ‘the company’ to show the presence of the disputed representative on the negotiating committee constitutes a clear and present danger to the bargaining process.... Another court insisted that it must be demonstrated ‘that the representative in the particular dispute has gained an unethical or overreaching advantage by the misuse of specific confidential information acquired by reason of his former tenure.... Defendant offered no evidence that Jeff Minckler as representative of the union had any confidential information which would either make good faith bargaining impractical or constitute a clear and present danger to the collective bargaining process. He had agreed not to engage in economic bargaining on behalf of the union and his information on the state’s position vis-a-vis money was outdated.... Defendant ... may not use Jeff Minckler’s presence on the union side of the bargaining table as an excuse not to bargain.” ULP #30-78

“In their Detailed Statement filed with this Board on November 24, 1981, Complainants made a number of allegations which amounted to nothing more than disagreement with the quality of representation they believe they are entitled to receive from the union. Those questions may well be proper where the issues raised are concerned with a duty of fair representation. They are not matters which proceedings under Section 206 can be expanded to include.” CC #2-81

22.71: Representatives - Officials

Under the Constitution of the Montana Education Association, “neither the President, Executive Secretary, any staff member or legal counsel of the Montana Education Association have the power to interfere with the authority of the President of a local unit.... There is no indication that members of the unit question [the local President’s] authority to do those incidental acts which are customarily done by such an agent--such as signing a stipulation waiving the rules of the Board of Personnel Appeals.” DC #4-83

23. DUTY OF FAIR REPRESENTATION

23.1: Definition

“Section 39-31-205, MCA, provides the standard of duty the union owed its members, viz. that it may not discriminate between its members in its duty to fairly represent the member’s grievance.” Ford v. University of Montana (1979)

The union contended that “the Board [of Personnel Appeals] erred by making no finding related to discrimination, as is required for a conclusion that there has been a breach of the duty of fair representation.... A clear majority of circuit courts applying the holdings of the Supreme Court [in Vaca] do not now require a finding of discrimination, bad faith or hostility on the part of the union to prove breach of the duty of fair representation.” ULP #24-77 District Court (1985)

23.2: Refusal to Process Grievance [See also 47.21.]

“The provisions defining unfair labor practices in 29 USC §158(b) are very comprehensive and cover a much broader scope than does §39-31-402 which is limited to a circumstance which may be more strictly construed. Therefore we reject the assumption that refusal to process a grievance is an

unfair labor practice within the meaning of §39-31-402 and hold that the District Court has jurisdiction in this matter.” *Ford v. University of Montana* (1979)

“The action or lack of action by the Teamsters [in processing McCarvel’s grievance], while not motivated by hostility, was so unreasonable and arbitrary as to constitute a breach of the duty of fair representation.” ULP #24-77

Stuart McCarvel was hired as a bookmobile driver. He discovered at the end of his first pay period that half his weekly hours were compensated at the rate for a driver and half at the lower rate for a clerk. The union refused to file a grievance on his behalf because of an oral agreement between the union and the city that drivers would be paid in that fashion. After filing an unfair labor practice, the Board of Personnel Appeals found that the union had breached its duty of fair representation. On appeal from the district court decision, the Montana Supreme Court held “that the Board of Personnel Appeals has jurisdiction to hear claims that a union has breached its duty of fair representation.” ULP #24-77 Montana Supreme Court (1981)

23.25: Refusal to Process Grievance - Failure to Properly and Effectively Process

The Union “has breached its fiduciary duty of fair representation by failing to accept and process the grievance of Stuart Thomas McCarvel. It has restrained this employee in the exercise of his rights guaranteed under subsection (2) of Section 59-1603 and in doing so is in violation of Section 59-1605(a) RCM 1947.” ULP #24-77

23.26: Refusal to Process Grievance - Negligent or Irresponsible Conduct

“The Board’s conclusion that the Union’s conduct was so unreasonable and arbitrary as to constitute a breach of the duty of fair representation is firmly supported by the law and the facts.” ULP #24-77 District Court (1985)

23.4: Non-Bargaining Situations

“While a union owes its members a duty of fair representation in areas covered by collective bargaining, Section 39-31-205, MCA; *Ford v. University of Montana* (1979) ..., it is not required to represent members outside of collective bargaining.... Klundt was not attempting to resolve his claim through binding arbitration or internal union procedures. Instead he filed charges with the Board of Personnel Appeals, a state agency.... Klundt alleges that the Union requested the Board to put his charges on hold. Even if the Union does not owe Klundt a duty of fair representation in this case, that does not mean the Union has the right to affirmatively interfere with appellant’s unfair labor practice charges.... Whether the charges themselves are meritorious or not, a 3-year delay may have prejudiced the appellant’s handling of his claim.” ULP #38-80 Montana Supreme Court (1986)

23.62: Actions for Breach of Duty - Liability of Employee Organization

“This order takes note of the rule handed down in *Vaca v. Sipes* wherein the U.S. Supreme Court stated that the union must not be charged for damages which resulted from the employer’s breach of contract. Here we are ordering the Union to pay McCarvel’s attorney to do for him what the union should have done in the first place. If the union ... chooses not to take this avenue, they may pay directly to McCarvel the money he would have earned had his grievance been promptly and properly processed.” ULP #24-77

23.63: Actions for Breach of Duty - Liability of Employer

See ULP #24-77.

23.7: Remedies [See also 74.]

See ULP #24-77 Montana Supreme Court (1981).

24. DUES AND ORGANIZATIONAL SECURITY**24.11: Dues and Assessments - Payment by Employee**

“The union ... has a fiduciary duty to inform an employee of a delinquency and a pending membership revocation.... Also, ... [the president of the union has] an obligation to inquire on behalf of his members as to the correct policy and to help them in their efforts to remain members.... Additionally, the dues obligation must be enforced uniformly....” ULP #34-78

“[T]he ‘right of self-organization,’ of forming, joining, or assisting ‘any labor organization’ (Section 201) must ipso facto include the right of paying dues to ‘any labor organization’.” ULP #2-79

24.12: Dues and Assessments - Nonpayment

See ULPs #2-79 and #44-79.

24.131: Dues and Assessments - Collection - Checkoff [See also 43.84.]

“The two acts [Collective Bargaining for Public Employees Act and National Labor Relations Act] are dissimilar in their provision for dues check-off.... The Labor Management Relations Act, Section 302(a), prohibits, in general, payments from an employer to a union. However, it provides an exception to that general prohibition by stating, in 302(c): ‘The provisions of this section shall not be applicable ... (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner’.” ULP #29-84

See also ULP #44-79.

24.132: Dues and Assessments - Collection - Deduction

“[A] minimum requirement for the validity of provisions for automatic renewal of deduction authorizations is that such provisions be contained in separate forms executed by the employees....” ULP #2-79

“Section 39-31-201 MCA is mandatory and therefore obligates the public employer to deduct union dues from an employee’s pay.” ULP #29-84

See also ULP #44-79.

24.14: Dues and Assessments - As Subject of Bargaining [See also 43.84.]

“Because Section 39-31-201 MCA is mandatory and therefore obligates the public employer to deduct union dues from an employee’s pay, there is no need to go through an analysis, under the Section 39-31-401(5) MCA charge, to determine whether there was a duty to bargain, an offer to bargain or a waiver of the right to bargain over the form to be used for dues deductions for bargaining unit members.” ULP #29-84

See also ULP #44-79.

24.15: Dues and Assessments - Authorization

“[T]he necessary elements for a form are that it indicate the employees’ understanding of it as a dues deduction authorization, that it authorizes the specific deduction and that it not infringe upon the employees’ rights.” ULP #29-84

24.151: Dues and Assessments - Authorization by Employee

“[A]gency shop fees, i.e., the fees a non-union member of a bargaining unit may be required to pay a union in lieu of dues, may be deducted from his/

her pay upon that employee's written authorization.... The employee's signing of an individual teaching contract [does not serve] as a legitimate substitute for the signing of the regular deduction form.... Acceptable individual written authorization for the deduction of the representation service fee ... would be obtained by the employee signing the School District's regular deduction form or a substitute which clearly indicates that the employee understands and authorizes the specific deduction." ULP #44-79

"Section 39-31-203 MCA states: 'Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.... Once an employee submits authorization the employer has no discretion.'" ULP #29-84

"If an employee objects to the use of a particular form, his recourse lies with his union. It was not intended that the public employer step in and attempt to interfere with internal union affairs." ULP #29-84

In Kalispell Federation of Teachers, ULP #2-79, "a contract between the Kalispell Education Association and the School District provided that dues would be made on School District authorization forms. The parties had agreed upon the form to be used. The parties in the instant case have not so agreed." ULP #29-84

"The holding in Kalispell ... was that a dues authorization form be freely entered into and that any conditions placed on it be reasonable." ULP #29-84

"In [Montana Federation of Teachers v.] Lake County [ULP #44-79], the district withheld dues without authorization and the Board found that practice to be improper. The Board went on to say any form need only indicate the employee's understanding of the deduction and that it be signed." ULP #29-84

See also ULP #2-79.

24.152: Authorization by Statute

See ULPS #2-79 and #44-79.

24.161: Dues and Assessments - Revocation by Employee

"[S]ince section 203 provides no other condition than that there be a 'written authorization' by the public employee before the employer is authorized to deduct union dues from the employee's paycheck, it would seem that any reasonable conditions voluntarily agreed to by the employee as prerequisite to withdrawing his or her authorization are allowed under the statute.... The gist of these cases from the private sector seems to be this: employees may add any conditions to the exercise of revocation of their deduction authorizations they wish so long as the statutory rights to revoke at certain times are not infringed by employer-union conduct.... There thus appears to be no cause for concern that the teachers' rights to revoke were infringed [by the automatic renewal agreed to by separate authorization form], particularly in view of the fact that Montana's section 39-31-203 gives no explicit rights of revocation at certain times." ULP #2-79

24.17: Dues and Assessments - Use of Dues

"[T]he payroll deduction of voluntary PAC [political action committee] contributions has virtually no impact on any individual teacher. However the payroll deductions caused administrative problems for the School District. I find the payroll deduction of voluntary PAC contributions to be a permissive subject of bargaining." ULP #9-84

24.194: Dues and Assessments - Agency Fees - Assessment of Non-Members

See ULPs #17-76, #34-78, and #44-79.

24.221: Organizational Security - Union Security Provisions - Agency Shop [See also 43.83.]

“[E]veryone was on notice that there would be a runoff election. The announcement of the runoff election results was when everyone should have been aware of the lack of notice. To attack the election only after an agency shop clause is agreed to, eight months later, is totally unwarranted. And for this Board to allow the attack would result in a breach of our legislative mandate to prevent strife and unrest in public labor relations.” UM #5-76

“The facts of this case show that we are faced with a widespread upheaval as a result of an agency shop clause in a labor agreement.” UM #5-76

“The problem perceived by the School District was that it was losing teachers because some teachers did not want to pay union dues. However, that problem, if in fact it was a problem, was caused by the agency shop provision in the parties’ contract. It was not caused by the use of the dues authorization form.” ULP #29-84

“The parties agreed during their last negotiations for a successor contract to delete the agency shop provision. The deletion, of course, means there is not union security; no teacher can be forced to pay dues to the Association. It does not mean the School District is relieved of its checkoff obligations under Section 39-31-203 MCA.” ULP #29-84

See also ULPs #34-78 and #44-79.

24.222: Organizational Security - Union Security Provisions - Open Shop [See also 43.81.]

See ULP #2-79.

24.41: Escape Periods - During Term of Contract

“With no time frame thus set out, the [School] District forms, signed by the six in the fall of 1978 either cancelling deduction authorizations or specifying Kalispell Federation of Teachers’ deductions ... are sufficient to cancel the District’s authority to deduct dues for the Montana Education Association from their paychecks.” ULP #2-79

“Courts have generally held that as long as there is an annual escape period, authorization with automatic renewal provisions are valid.” ULP #29-84

31. RECOGNITION [See also 22.41, 72.21 and 73.112.]

“Section 59-1602(6) of the Montana Collective Bargaining for Public Employees Act ... defines an exclusive representative as: ‘a labor organization which has been designated by the Board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.’ (Emphasis added.)” UM #2-75

31.24: Request Filed with Employer - Proof of Majority Status

See ULP #20-78.

31.25: Request Filed with Employer - Unit Description

See ULP #19-78.

31.3: Employer Response

“For over 20 years, Defendant Department [of Highways] recognized various labor organizations as representatives of some of its maintenance employees for purposes of collective bargaining.” DC #5-75 District Court (1979)

“The Montana Collective Bargaining Act for Public Employees became effective July 1, 1973, thus, the employer recognition of the Craft Council was purely voluntary. The collective bargaining agreements between the parties, prior to the enactment of the Act, were reached through de facto bargaining. Labor agreements have been in effect between the employer and the Craft Council from October, 1959, to the present.” DC #2-81

31.46: Petition or Request Filed with Board of Personnel Appeals - Appropriate Unit [See also 33.21.]

Counter-petition by employer called for combining three petitions submitted by union into one since all city employees were under standard classification and pay plan, and all were under the supervision of a single supervisor. The union offered no objection, and it was so ordered. UD #37-74

Comparison of police department with local fire department and other cities' police departments is rejected because of too many variables. Job titles and classifications are not factors in the inclusion or exclusion in a bargaining unit because they are too easily made the tools of management. UD #36-75

Size alone is an important consideration since actual titles may be the same as in other cities, but duties may vary. UD #36-75

“Public employers have the right to recognize labor organizations for units of employees. Certification by Intervenor Board is not necessary, nor is a determination by that Board of “an appropriate unit” required under the Public Employees Collective Bargaining Act.” DC #5-75 District Court (1979)

“It is imperative to recognize that this is a decertification proceeding, not a new unit determination.... It is not the hearing examiner's prerogative to apply new unit determination criteria in this matter.... Rather, it is her task to determine voter eligibility based on what the composition of the unit was on the date the petition was filed, as required by rule 24.26.644(2) ARM.” DC #8-81

“[T]emporary employees meeting the conditions outlined [in the decision] have indeed been bargained into the unit now under consideration....” DC #8-81

“It is this Board's practice to defer to parties' labor contracts and well established law that parties may negotiate the composition of their bargaining unit.” UC #5-83

See also DC #8-81 District Court (1982) and ULP #26-79.

31.5: Bars to Recognition [See also 32.14 and 35.6.]

See ULP #20-78.

32. CERTIFICATION PROCEDURES

32.1: Filing of Petition

“There was no petition for new unit determination filed by a labor organization or a group of employees, as required by ARM 24.26.512.” DC #22-77 District Court (1979)

32.13: Filing of Petition - Timeliness

“MAC 24-3.8(14)-S8090(1)(b) ... states: ‘The petition must be filed not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or upon the termination date thereof.... [T]he purpose of the rule is to prevent strife and unrest by not making the bargaining representative and the labor agreement subject to challenge except on a very limited basis, thereby providing for stability and preventing constant strife.’ UM #5-76

“[A] contract bar doctrine is designed to insure a period of labor peace because a petition can only be filed during the ninety-sixty day period before the termination of a collective bargaining contract.” UD #19-75

32.141: Filing of Petition - Bars to Petition - Contract

The Hershey Chocolate Company case states: “the [National Labor Relations] Board has held that a schism removing a contract as an election bar exists where: (1) there is a basic intra-union conflict; (2) as a result of this basic intra-union conflict, the employees in the bargaining unit have taken action that has created such confusion in the bargaining relation that stability can be restored only by an election; (3) there has been an open meeting, with due notice to members, for the purpose of considering disaffiliation; (4) a disaffiliation vote is taken within a ‘reasonable period’ of time the conflict arises; (5) the employers are faced with conflicting representation claims’.” UM #5-76

“A schism deals with a group of employees within a unit who, because of corruption of leaders, political affiliations of the leaders, or some other major deficiency in the present leadership, disaffiliates with the present bargaining representative and forms its own unit representative and demands the employer deal with it. The result is confusion of with whom the employer is to bargain with. The resulting disruption is so great, the only solution is an election.” UM #5-76

“The Board’s Rules and Regulations do provide for a ‘contract bar’.” UD #19-75

“This Board follows the National Labor Relations Board and proven labor relations stability in providing for the traditional 60-90 day “window” period by adoption of the following rule: ARM 24.26.543(2)....” DC #15-79

“In Deluxe Metal Furniture Company ... the National Labor Relations Board established the ‘premature-extension doctrine’ and determined that a prematurely-extended contract will not bar an election if the petition is filed over 60 but not more than 90 days before the terminal date of the original contract. A contract will be considered prematurely extended if during its term the contracting parties execute an amendment thereto or a new contract which contains a later terminal date than that of the existing contract.” DC #15-79

See also UDs #26-75 and #27-75.

32.142: Filing of Petition - Bars to Petition - Election within Preceding Year

See UD #11-77.

32.15: Filing of Petition - Amendments

Mutually acceptable amendment to a petition is allowed at the hearing. UD #16-74

32.16: Filing of Petition - Withdrawal

Union allowed to withdraw petition for unit determination at hearing even though 30 percent proof of interest had been previously filed for that union. UD #9-74. See also UDs #15-74 and #16-74.

32.18: Filing of Petition - Waiver of Procedures [See also 09.6.]

See UDs #56S-74, #5-77, #6-77, #22-77, and #21-78.

32.221: Showing of Interest - Nature of Showing - Authorization Cards

“[E]mployer contended that the purpose of the authorization cards used by the Petitioner was misrepresented and the cards were gained by fraud.... The documentation of the 30 percent valid authorization card [showing of interest] requirement is an administrative function and cannot be challenged.” UD #7-79

32.223: Showing of Interest - Nature of Showing - Employee Petition

See ULP #14-77.

32.227: Showing of Interest - Nature of Showing - Coercion or Misrepresentation

See UD #7-79 and ULP #14-77.

32.51: Hearing Procedures and Conduct - Parties

The Montana Federation of Teachers petitioned the Board of Personnel Appeals for a new unit determination. Since the Montana Education Association was the recognized bargaining agent for the professional employees of the Employer, the Hearing Examiner treated the Association as a party to the hearing, and the Board of Personnel Appeals ordered that the Montana Education Association be treated as a formal party to the proceedings. UD #9-79.

32.6: Intervention [See also 32.232, 32.61, 32.62, 36.116, and 36.216.]

See UD #1-80.

32.61: Intervention - Procedures [See also 32.6.]

"Although AFSCME did not properly intervene in this proceeding, the hearing examiner included them as a party because he considered them an indispensable party." UD #39-74

See also UD #36-74.

32.81: Orders, Rulings and Decisions of Board - Dismissal of Petition [See also 71.227.]

Petition by employer for bargaining unit determination dismissed by the Board of Personnel Appeals for lack of stenographic record of prior hearing. UD #18-74

Petition denied on grounds that another union already has contract. This decision noted that a petition for decertification is the appropriate action. UD #27-75

See also UDs #27-74, #19-75 and #11-77; UM #5-76; UCs #1-81 and #2-84 and CC #2-81.

32.83: Orders, Rulings and Decisions of Board - Direction of Election

See UDs #7-79 and #6-84.

32.9: Certification

"This action was brought under 39-31-206 MCA which requires that certification as exclusive representative be extended or continued only to a labor organization the written bylaws of which provide certain rights and safeguards." CC #2-81

"Regardless of the use of the word 'certification' in 24-26.603 ARM, I find it is necessary to define certification as the formal and binding acknowledgement of exclusive representative status, whether that acknowledgement is by means of designation by this board or by recognition by the public employer." CC #2-81

"A labor organization can become the exclusive representative of a bargaining unit in one of two ways: by 'designation' by the Board of Personnel Appeals, or by 'recognition' by the public employer. The organization which receives the majority of votes in the election is 'certified' by the Board of Personnel Appeals as the exclusive representative. This 'certification' is the only way in which the Board of Personnel Appeals may 'designate' an exclusive bargaining agent. Thus, the term 'certification' as used in Section 39-31-206 must be viewed as having a specific meaning, which meaning unquestionably comprehends the term 'designate.' ... There is nothing in the Collective Bar-

gaining for Public Employees Act as originally propounded or amended which suggests [that certification also comprehends the term ‘recognize.’]” CC#2-81 District Court (1984)

“[T]he word ‘certification’ as used in Section 39-31-206 was not intended by the legislature to include recognition and for that reason the section has nothing to do with uncertified labor organizations which act as exclusive representatives of their membership by virtue of public employer recognition of them as such.” CC#2-81 District Court (1983)

32.91: Certification - Board of Personnel Appeals Authority

“Section 59-1602(6) explicitly states that an exclusive representative can be designated by the Board or by the public employer.” UD #19-75

“There are no grounds for this Board to deny continuation of certification of Local 1023 as the exclusive representative of the Complainants.” CC #2-81

“Because of the conclusion noted above [that ‘certification’ does not include ‘recognition’], it is our opinion that the respondent Board had no jurisdiction to hear or in any way dispose of the petitioner’s original application and in doing so acted in excess of its statutory authority.” CC#2-81 District Court (1983)

32.92: Certification - Without Election

“Although this Board has not designated Local 1023 as the exclusive representative of Complainants through formal representation proceedings under 39-31-202 MCA, it functions as such and has been so recognized by the Department of Highways.” CC #2-81

32.93: Certification - Timeliness

See UD #11-77.

32.95: Certification - Duration

The ruling of the Hearing Examiner allowed for employees to enter into statewide bargaining unit if interest is shown at a later date. UD #25-74

32.96: Certification - Challenge Periods

See UD #22-77.

32.97: Certification - Amendment

“The rules of this Board state: ‘ARM 24.26.104 Amending Petitions ... at any time prior to the casting of the first ballot in an election or prior to the closing of a case, upon such consideration as the Board considers proper and just’.” UD #22-77

33. UNIT DETERMINATION CRITERIA

33.1: Board of Personnel Appeals’ Authority [See also 01.24.]

The Board of Personnel Appeals does not have the authority to alter existing unit structures in defining appropriate bargaining units. UD #64S-74

“Under both statute and regulations one thing is clear. The board makes unit determinations and the employees, under rules laid down by the board, make representation determinations. The two processes and the roles of the board and the employees are clearly intended to be discrete under the statute, and the regulations purport to carry out that intent.” DC #22-77 District Court (1978)

“Board of Personnel Appeals jurisdiction and authority in this matter is derived from sections 39-31-103(1) and 39-31-202 MCA.” UD #2-80

See also UD#s #18-77, #18-78, and #1-79.

33.2: Standards for Unit Determination

“[I]n accordance with MAC 24-3.8(10)-S8070(8)(a) the Board dispensed with a hearing on the proposed unit and issued a ‘Determination of Appropriate Unit’ on 15 April 1974. The order was signed by the then Chairman of the Board.... The above order was in accordance with the Board’s Rules and Regulations. The rules, in effect, illustrate the Board’s policy of ‘non-interference’ if labor and management agree on the appropriateness of a unit. The Board’s Rules and Regulations also allow for future modification (MAC 24-3.8(10)-S8089). The above order was issued per the employer-union agreement, not per the result of a formal unit determination hearing.” UM #2-75

“This Board will decide in each case the unit appropriate for modification for the purposes of collective bargaining. In performing this function, the Board must maintain the two-fold objective of insuring to employees their rights to self-organization and freedom of choice in collective bargaining and of fostering public employment peace and stability through collective bargaining.” UM #2-75

“The purpose of unit determination, either by agreement or hearing, is to create a stable bargaining unit, to avoid confusion and misunderstanding about the scope of a unit and therefore avoid subsequent conflicts which may lead to disruptions of meaningful collective bargaining and good labor relations.” UM #2-75

33.21: Standards for Unit Determination - Appropriate Unit [See also 31.47 and 33.3.]

Even though new union (Montana Public Employees Association) based authorization cases on three different units while old union (AFSCME) had grouped all employees into one unit, the Board of Personnel Appeals allowed the unit to remain the same since the employer offered no objection. UD #9-74

Employees of a state agency based in several counties may determine by county-wide elections their bargaining agent. The result of this ruling is that a state agency may have employees represented in two or more bargaining units. UD #10C-74

List of inclusions and exclusions by classification submitted by intervenor was accepted by Hearing Examiner as further defining unit. UD #36-74

Electrical inspector included in unit represented by Plumbers and Pipe Fitters over objection of city which claimed that there should be two units since different crafts were involved. UD #49-74

Faculty at Northern Montana College determined to be an appropriate bargaining unit although system-wide unit might be more appropriate. Unit established in response to wishes of all three labor organizations and faculty. UD #55S-74. See also UD #66S-74.

“Determining an appropriate unit is a major first step in removing conflicts.” UM #2-75

“In resolving the unit issue, the Board’s primary concern is to group together only employees who share a substantial community of interest. It is not the Board’s policy to compel labor organizations to represent the most comprehensive grouping.” UM #2-75

“In looking at National Labor Relations Act precedents I find Section 9(c)(5) provides that ‘in determining whether a unit is appropriate the extent to which the employees have organized shall not be controlling.’” UM #2-75

“The Montana legislature clearly authorized the Board of Personnel Appeals as the agency to establish appropriate bargaining units for public employees when it enacted section 39-31-202, MCA: ‘In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the

Board or an agent of the Board shall decide the unit appropriate for the purpose of collective bargaining...’” UC #1-77 Montana Supreme Court (1982). See also UM #2-75.

Section 59-1606 discusses the Board of Personnel Appeals’ responsibility for deciding the appropriate unit and the factors it must consider in making such a determination. UD #18-77

“The rules and regulations of the Board [of Personnel Appeals], ARM 24-3.8(10)-S8000(1), provide that a unit may consist of all the employees of the employer, any department, division, bureau, section, or combination thereof if found to be appropriate by the Board.” UD #18-77

“A change in administration or a change in personnel, in itself, is not a factor in determining an appropriate bargaining unit.” DC #6-78

“[A]s was reasoned by the U.S. Supreme Court in *NLRB v. Atkins & Co.* ... (1974), ‘...the Board in performing and applying these terms [“employee” and “employer”] must bring to its task an appreciation of economic realities, as well as *a recognition of the aims which Congress sought to achieve by this statute*. This does not mean that it should disregard the technical and traditional concepts of “employer” and “employee.” But it is not confined to those concepts. It is free to take account of the more relevant economic and statutory considerations....’ (Emphasis added.)” UC #4-79

“The issue in this matter is not to determine the appropriate unit but, instead, we must determine the existing unit.” DC #2-81

“In *Morand Brothers* the National Labor Relations Board stated that an ‘appropriate unit’ need not be the only appropriate unit, or the ultimate unit, or the most appropriate unit, but rather only an appropriate unit. The unit as determined must be appropriate to ensure the affected employees ‘in each case, the fullest freedom in exercising rights guaranteed by this Act.’ The standard applied--an appropriate unit--is very broad. The purpose is, as stated, to assure employees the fullest freedom in exercising their rights to collectively bargain.” UD #1-82

“[W]here the two sections [39-31-103 MCA (excluding supervisory employees and management officials) and 39-31-109 MCA (grandfathering in existing units)] come into conflict, the conflict must be settled in view of the policy of the act: ‘39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the State of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees’.” UC #2-83

“[I]t has long been this board’s policy in any representation proceeding to afford employees covered by the Act the opportunity to bargain collectively unless some overriding or compelling reason demands their exclusion.” UC #8-79

See also UDs #1-74, #11-74, #13-74, #17-74, #29-74, #39-74, #42-74, #50-74, #53-74, #56S-74, #65C-74, #1-75, #43-75, #17-77, #22-78, #24-78, #4-79, #6-79, #7-79, #9-79, #18-79, #24-79, #26-79, #27-79, and #29-79.

33.22: Standards for Unit Determination - Most Appropriate Unit

“[I]t is not the function of this Board to determine the most acceptable bargaining unit, only an acceptable bargaining unit.” DR #2-76

See also UDs #11-77 and #5-80.

33.3: Criteria [See also 33.21.]

“Section 59-1606(2) ... sets forth certain factors which must be considered in deciding the appropriate unit for the purpose of collective bargaining....” UD #8-77

"All of the criteria mandated for consideration by the act do not have to be met by all employees in a proposed unit.... [That is] seldom ... to be found." UD #8-77

"Our collective bargaining statute, 39-31-202 MCA, requires the Board of Personnel Appeals or its agent to consider certain factors in deciding the appropriate unit for purposes of collective bargaining by public employees. Those factors are: (1) community of interest, (2) wages, (3) hours, (4) fringe benefits and other working conditions, (5) the history of collective bargaining, (6) common supervision, (7) common personnel policies, (8) extent of integration of work functions and interchange among employees affected, and (9) desires of the employees." UC #4-80

See also UD#s #15-76, #18-76, #18-77, #24-78, and #9-83.

33.31: Criteria - Historical Considerations

"The intent of the Legislature in not allowing the new legislation to affect existing bargaining units and historical bargaining patterns is to maintain the status quo which the parties to the agreement have found workable in the past. This, of course, would prevent any disruption of the relationship that existed between the parties up to the passage of the legislation." UC #1-77

"In UD #5-74, the Board of Personnel Appeals found an appropriate bargaining unit to be all LPNs and aides employed by Liberty County Nursing Home and Hospital. Aside from some different faces in various positions, there have been no changes in the administrative structure or the duties and responsibilities of the positions in the past five years...." UD #24-78

The petition was "dismissed for the reasons that the sergeants and lieutenants were previously excluded from the bargaining unit in June 1976 and there is no indication that duties and responsibilities of these positions have changed since that time." UD #4-79

"[I]t was found that a bargaining unit existed which included the Lieutenants. The Employer sought to change the status quo by requesting that the Lieutenants be excluded. By this action, the Employer is assuming the burden of proof." UD #7-79

33.311: Criteria - Historical Considerations - Bargaining History

Section 59-1606(2) RCM 1946 prohibits employees who are included in a larger bargaining unit which is already in existence from altering or fragmenting that unit structure by petitioning to organize under a different union. UD #2-74

"This Board is loath to disturb existing units, whether established by agreement or by certification, when bargaining in those units has been successful over a period of time. However this does not preclude correction of errors or alteration of units to adjust to changed circumstances." UM #2-75

"[T]he test to be applied when determining the appropriate inclusion or exclusion of supervisory and/or managerial positions in grandfathered units speaks of actual substantial conflicts.... The requirement for the demonstration of actual substantial conflict is obvious: past experience is a far more reliable gauge or probability than mere speculation." UC #1-77

"No information in this matter indicates that there is a history of collective, rather than individual bargaining between [Ardella and LeRoy Baker (bus drivers, cook and custodian)] and the school district. Therefore, the bargaining history does not preclude their inclusion in the proposed unit." See Section 39-31-202 MCA related to "the history of collective bargaining." UD #6-79

See also UD #9-74.

33.313: Criteria - Historical Considerations - Prior Contract

The Board finds “that the provisions of Section 59-1615, RCM, 1947, anticipated this problem [of disavowing recognition of a unit after the expiration of the contract] and gave continuing protection to those employees, whether supervisory or not, who were recognized prior to the effective date of the Act.... The Board finds that this grandfather clause applies to the recognition of the bargaining agent as well as the ratification of existing bargaining agreements.” ULP #2-73

“[A] bargaining unit composed of all maintenancemen I, II, III, IV, V, VI, and maintenance supervisor I’s represented by AFSCME In the state of Montana presently exists [from a contract executed between AFSCME and the Montana Highway Department in 1970 which was still in effect at the time of the hearing].... [T]he so-called ‘grandfather clause’ of the Public Employees Collective Bargaining Act requires us to recognize this contract, in spite of its age, because it was in existence prior to July 1, 1973, the effective date of the act.” UD #39-74

Two “butcher-supervisors” were excluded from units on the grounds that they are covered under a prior contract with AFSCME. UD #42-75

“The City of Billings has recognized [Firefighters] Local #521 since 1968. The bargaining agreement reflects that in its ‘recognition clause.’ Therefore, by recognizing the agreement, the City recognizes the Unit. The Unit does not cease to exist when the agreement ends. The Unit continues to exist until a new Unit is formed and recognized.” UC #1-77 Montana Supreme Court (1982)

“The Board of Personnel Appeals has ... consistently held that individual contracts may not interfere with the collective bargaining process.... [T]he right to collectively bargain is paramount to any effect individual contracts might have.” UD #6-79

“The Board of Personnel Appeals argues that a change of exclusive representation nullifies the applicability of the grandfather clause as to preserving the unit. The Board argues that the term ‘recognized,’ in its technical labor vernacular, applies only to representatives and it therefore follows that, because units are not ‘recognized,’ the legislature did not intend to preserve units by enacting the grandfather clause. This interpretation of the law is rational.” UC #6-80 Montana Supreme Court (1985)

“This Board, in *Montana Public Employees Association v. Department of Administration, Labor Relations Bureau*, UC #6-80 (1981), decided that the grandfather clause has no application when there has been a change of exclusive representative in a grandfathered bargaining unit.” UC #2-83

“Although the Teamsters Union did not appear as the exclusive representative in the parties’ contract until July 1, 1973 [the day the Collective Bargaining for Public Employees Act became effective], the District had in fact recognized it as such prior to that time. Such de facto recognition cannot be ignored nor can the grandfathered clause be held to be inapplicable.” UC #2-83

“Section 39-31-109 MCA, the grandfather clause, is applicable in this case. The positions in question are supervisory as that term is used in Section 39-31-103(2)(b) MCA. There is no actual substantial conflict within the bargaining unit as it presently exists.... Since there is no actual substantial conflict within the bargaining unit as it exists, the petition to declare it inappropriate is dismissed.” UC #2-83

See also UDs #67S-74 and #22-75.

33.32: Criteria - Unit Size

“The Board’s practice regarding the minimal size of a bargaining unit has been to hold that the intent of the Act was for ‘collective’ bargaining, and that a unit of one was inappropriate because it was not collective.” UD #1-82
 33.321: Unit Size - Accretion

“No contention whatsoever having been made that the accretion [the incorporation of the Alcoholic Counselors into the already existing bargaining unit at Galen] was improper, the Board of Personnel Appeals tacitly acknowledged that the Alcoholic Counselors were indeed a subdivision of the already existing bargaining unit.... The fact that the employees later decided that they did not want to be incorporated into the already existing bargaining unit, but rather wished to have their own bargaining unit, must be interpreted as a change of mind, not a change of circumstance.... [S]uch change of mind on the employees’ part does not constitute an unusual circumstance which would warrant suspension of the election bar rule....” UD #11-77

33.322: Criteria - Unit Size - Expansion

Bargaining unit size adjusted by mutual consent at time of hearing. UDs #35-74 and #63S-74.

33.323: Criteria - Unit Size - Fragmentation - Proliferation [See also 37.11.]

“The degree of collective bargaining organization the Board presently observes in the county welfare departments indicates that, in order to insure an efficient negotiating relationship between the employer and the employee representatives, the appropriate Board action would involve modification of the existing unit structure.... [The Hearing Examiner then determined the] appropriate units for collective bargaining purposes are: One unit for all county welfare departments the employees of which express a desire to be members of AFSCME; one unit for all county welfare departments the employees of which express a desire to be members of MPEA; and such additional units as correspond to the number of other labor organizations selected by employees in individual county welfare departments.” UD #10C-74

“To allow the partial disestablishment or decertification of bargaining units [from state-wide to division-sized units] could result in extreme fragmentation and could destroy the very fabric of a stable labor relations process.” UD #39-74

Both petitioning unit (MPEA) and intervenor (AFSCME) favored a bargaining unit composed of only employees of the Division of Rehabilitative Services in the Department of Social and Rehabilitation Services, but SRS filed a counter-petition and such a unit was deemed inappropriate because all SRS employees are on the same classification and salary plan and Rehabilitative Services is only one of the eight divisions. To avoid fragmentation which would damage the department’s ability and effectiveness, it was ruled that the appropriate bargaining unit was “all non-exempt employees of the Department of Rehabilitative Services, excluding employees in county welfare departments.” UD #42-74

“Petitioners seek to decertify a part of an established bargaining unit. Such a procedure is contrary to the well recognized rule against partial disestablishment and fragmentation of a bargaining unit. Such a procedure, if allowed, would promote, not prevent strife, unrest and instability within the collective bargaining area.” DC #5-75

“The hearing examiner was in error in deciding that this Board’s present rules established a procedure for partial decertification of an existing bargaining unit.” Subsections (e)(ii) and (f) of Regulation 24.3.8(14)-S8090(1)--the present rule on decertification--“refer to ‘the unit’ meaning the entire certified or recognized bargaining unit.” DR #1-76

“The NLRB devised a ‘basic six unit structure’ guideline to formulate bargaining units in health care institutions to guard against fragmentation.... The divisions ... excluding guards, are: (1) physicians; (2) registered nurses; (3) other professionals; (4) technical employees; (5) business office clericals; and (6) service and maintenance employees.” UD #24-78. See also UD #5-80.

“One all-inclusive unit would be contrary to the guidelines established, however, six separate units would threaten the collective bargaining rights of the employees [because the units would be so small].... In view of the foregoing, the community of interest shown between the LPNs and aides, and the 2 NLRB cases cited earlier, a collective bargaining unit consisting of LPNs and aides would be proper.” UD #24-78

“[T]he employer will usually favor a large unit in order to prevent a proliferation of small units. The union usually wants a smaller unit because it can be more readily organized and managed.... The size of the unit determined goes to the heart of our system and has a pervasive impact upon employer-employee relations.... [In] many cases ... [it] will determine whether there will be an election, since the labor organization must make a showing of interest.” UD #1-80

The Hearing Examiner dismissed the MPEA’s petition to represent cooks and food service workers at Eastmont Human Services Center and ruled that the proposed unit was inappropriate. He placed considerable emphasis on the private sector’s “basic six unit structure.” He noted that “the Collective Bargaining Act for Public Employees makes absolutely no provision for the consideration of state travel policy, travel distance or energy demands as factors in the determination of appropriate bargaining units.” The Hearing Examiner held that the petitioned for cooks and food service workers comprised only a portion of the unit labeled “service and maintenance employees.” The Board’s Final Order remanded the matter to the Hearing Examiner to specifically reconsider the decision in light of statutory (i.e. Collective Bargaining Act for Public Employees) criteria for determining bargaining units. Before the Final Order, MPEA had petitioned for all maintenance workers, custodial workers, food service workers and cooks at Eastmont, and the Employer agreed with the newly filed petition. After the Final Order, both parties jointly requested that further proceedings on UD #5-80 be discontinued. The Final Order was subsequently rendered moot. UD #5-80

“This Board has adopted a policy which is consistent with the National Labor Relations Board in denying attempts at partial decertification of recognized or certified bargaining units.” DC #2-81

See also UDs #2-74, #39-74, #53-74, and #36-75; UM #3-77; DCs #2-75, #6-76, #12-77, #4-78, #3-79, and #4-79.

33.332: Criteria - Type of Employment - Job Description

See UD #53-74.

33.333: Criteria - Type of Employment - Work Activities

“The facts in Decertification #5-75 differ from those in this present case only with the description of the unit desiring decertification. In Decertification #5-75, the unit petitioned for was based upon geographic location. In this present case, the unit was based upon certain classifications of employees and union affiliations.” DC #2-81

See UDs #11-74, #29-74, #1-75 and UM #1-75.

33.335: Criteria - Type of Employment - Education - Prior Training

See UM #1-75.

33.336: Criteria - Type of Employment - Professional Status [See also 34.4.]

The academic rank of university or college faculty were determined to be those categories listed on the back of the Regents' contracts. Thus, "Lecturer" is included. UD #66S-74

"[T]he faculty members of the College of Engineering who are not registered engineers or engineers in training have a community of interest with those faculty members of the College of Engineering excluded [by Section 59-1602(2) because they are professional engineers and engineers in training]...." The nonexempted faculty members also have a community of interest with the other faculty of Montana State University. Therefore, "the determining factor on whether or not the nonexempt faculty members of the College of Engineering should be included in the appropriate bargaining unit for the purpose of collective bargaining shall be the desire of the nonexempt faculty members." UD #11-76

"Although the National Labor Relations Board is prohibited from placing professional employees in the same unit with non-professionals unless they, the professionals, desire to be in the same unit, our act contains no such prohibition. This Board's practice has long been to include both in the same unit, if they have a sufficient mutuality of interest with other employees." UC #4-79

See also UD #9-83.

33.34: Criteria - Community of Interest

"Substitute teachers, homebound teachers, summer school teachers, curriculum workers, and other part time teachers ... share a community of interest with other employees of the bargaining unit. They perform common work tasks. The part time employees are involved in the teaching of students and, in the case of the curriculum worker, the revision of curriculums, as are other bargaining unit employees. Both the part time and other bargaining unit employees possess similar educational backgrounds. They are supervised by the same personnel. For the most part, they work in the same physical plants. A large degree of interchange exists between the part time and other employees of the bargaining unit. Likewise, their work functions are integrated. These factors ... outweigh such factors as difference in the wage and benefit programs and time worked between the part time employees and other employees of the bargaining unit." UM #1-75

"[T]he two employees do have special and distinct interests, which outweigh and override the community of interest shared with other city employees. In these circumstances it would result in creating a frictional mold where the parties would be required to force their bargaining relationship." UM #2-75

"[T]he distinction between academic and nonacademic is a sufficient criteria on which to base the membership of this bargaining unit." DR #2-76

"[I]f it can be shown that a certain group of employees has a greater community or mutuality of interest in wages, hours, working conditions, etc., than any other group of employees, then the appropriate unit for the purpose of collective bargaining is that group with the greater common interest. It makes no difference whether the unit is one proposed by any of the parties to the formal unit determination hearing.... The Act requires that the Board determine the appropriate unit; it does not require that it accept units as proposed by one of the adversaries." UD #18-77

"The NLRB has interpreted common interest among employees to include similarity of duties, similarity of wages, hours and working conditions, similarity of fringe benefits and common supervision." UD #18-77

Ardella and LeRoy Baker (bus drivers, cook and custodian) “perform work that is basically similar to that of the other employees....” They are not independent contractors, as the School District contends. UD #6-79

“No problem, conflict, or compelling reason of record existed to warrant the exclusion of these six faculty members from the unit.” UC #8-79

“The wages, hours, fringe benefits, working conditions, history of collective bargaining, supervision, personnel policies and qualifications are the same for regional services personnel as for other employee-teachers in the Deer Lodge Elementary School District.... They have a community of interest with other members of the Montana Education Association bargaining unit of which they already belong.” UD #9-79

“[T]his hearing examiner is concerned that the interests of these employees are not so similar to those of the other members of the unit as to facilitate a workable collective bargaining relationship.” UD #2-80

“[B]ecause of the greater mutuality of interest between the Communications Center employees and other civilian employees represented by the Teamsters with respect to wages, hours, working conditions, fringe benefits and interchange of employees, I conclude they more appropriately belong in the [large, organization-wide bargaining unit represented by] the Teamsters [than in the unit represented by the Firefighters].” UC #4-80

“Non-certified employees in the Poplar School District share a number of working conditions.... However, there are many things they do not have in common: they generally work in different locations, they do different types of work with different educational and training requirements, they work different hours ... there is little integration of work functions.... Further, the work sites are so spread out that there is little opportunity for interchange among employees performing these diverse types of work.... On balance there are more differences between the groups of non-certified employees than there are similarities. Consequently, we must conclude that the appropriate unit in this case is one composed of only the custodians.” UD #6-81

“If I approve the bargaining unit management proposed at the hearing, the possibility of the conflict would only increase. Therefore, one collective bargaining unit among the employees would decrease any conflict.” UD #12-81

“Determining a ‘community of interest’ entails the assessment of the overall interests, working conditions, and employment similarities of employees so that members of the same bargaining unit may effectively bargain conditions of their employment. Not surprisingly, in weighing all the factors which must be considered in establishing an appropriate unit, some factors are likely to indicate sufficient community of interest, while some may point to a contrary result.... Sufficient community of interest does exist between the clerical and planning employees of the Flathead Regional Development office to include them in the same bargaining unit.” UD #1-82

“The Board in making unit determinations seeks an employee group which is united by its common interests and which neither embraces employees having a substantial conflict of economic interest nor omits employees sharing a unit of economic interest. An examination of the facts of the instant case compels the conclusion that the unit should not be limited to those persons with a master’s degree or higher degree.” UD #9-83

See also UDs #42-74, #11-76, #21-77, #24-78, and #1-80.

33.341: Criteria - Community of Interest - Common Supervision

“If it is found that the County Commissioners [as opposed to the District Court] are the employers of all persons in the unit, then one could only conclude that supervision, in its broadest sense, is common.” UC #4-79

See also UDs #1-74 and #18-79.

33.342: Criteria - Community of Interest - Location of Employment

"[W]hile not expressly deciding the issue, I would entertain serious doubts of the legality of the County Option under the Collective Bargaining Law. Under it there could apparently be limitless and unending changes within a recognized bargaining unit.... contrary to the policies of promoting stability and harmony which are the recognized purposes of the Collective Bargaining Act." DC #5-75

"Through the 'County Option provision' referred to here, the Plaintiff and Defendant agreed that its maintenance employees could join a union in any previously unorganized county, or change unions in a previously organized county, through a simple showing that a majority of the maintenance employees in any one county desired to do so. The practice of establishing majority status through the presentation of authorization cards is and has been recognized as valid by the Plaintiff, Defendant and Intervenor AFSCME herein." DC #5-75 District Court (1979)

33.343: Criteria - Community of Interest - Similar Wages, Hours, Terms and Conditions of Employment

Part-time teaching faculty (less than 0.5 FTE) were judged not to share a community of interest with full-time faculty. UD #4-74

Teaching one-half time or more is not sufficient basis for inclusion in the bargaining unit because the faculty may share a community of interest but be assigned to duties other than teaching. UD #66S-74

Community of interest of employees in different departments was ruled sufficient grounds for inclusion in a single bargaining unit. UD #67S-74

The Hearing Examiner found "that .5 FTE teaching responsibility [is] an improper criterion to determine an appropriate bargaining unit in this matter." UD #11-76

"Both ten- and twelve-month office clerical employees have similar wages, fringe benefits, working conditions, personnel policies, hours and a history of meeting and conferring with a centralized management.... In addition ... the office clerical workers also have similar duties." UD #18-77

"Although one can find a mutuality of interest among both [the Independent Monitoring Unit and the Governor's Employment and Training Council] ... in wages, hours, fringe benefits and other conditions of employment, there are two considerations ... which cannot be overlooked:" the groups do not have common supervision and there is a potential conflict of interest. UD #18-79

33.35: Criteria - Conflict of Interest

"The obvious reason for excluding supervisory employees and management officials is that no man 'can serve two masters.' A supervisory employee cannot be loyal to management and to his/her union.... Another reason is the potential of intra-union conflict.... Thus the reason for the Legislature excluding supervisory and managerial employees from the bargaining unit is logical both from management's and labor's position." UC #1-77

The Board of Personnel Appeals applies a two-pronged test when considering the question of the inclusion or exclusion of supervisory employees or management officials in grandfathered units. It "adopted this test because it: '... allows for the special consideration that must be given grandfathered units ... but also prevents conflicts that are intended to be avoided by the exclusion of supervisory employees and management officials...'" UC #1-77

"Independent Monitoring Unit personnel will be monitoring the activities of the Governor's Employment and Training Council. That relationship in itself is sufficient ... to negate positive considerations of a community of interest." UD #18-79

“If I approve the bargaining unit management proposed at the hearing the possibility of the conflict would only increase. Therefore, one collective bargaining unit among the employees would decrease any conflict.” UD #12-81

“The difficult question brought by this matter is the second part of the two part test: is there an actual substantial conflict resulting in the compromise of the interests of any party to its detriment? There are three areas of potential conflict in the fact situation presented here. First there is the intra-unit conflict possibility. Second, there is a possibility for a conflict between this unit and other employee groups represented by different unions. Third, is the possibility of conflict between the bargaining unit and management.... I find no actual substantial conflict which would warrant the dissolution of the entire unit.” UC #2-83

See also UC #1-77 Montana Supreme Court (1982).

33.382: Criteria - Employer Considerations - Employer Structure and Organization

See UDs #14-74 and #49-74.

33.39: Criteria - Other Considerations

See ULP #19-78.

33.393: Criteria - Other Considerations - Employee Self-Determination

“The effectiveness of the collective bargaining process depends in large part on the coherence of the employees in the unit.” UM#2-75

“To ignore the expressed desires of ten percent of this unit could hardly be said to assure to employees the fullest freedom in exercising the rights guaranteed by this Act or foster stable labor relations as contemplated by the Public Employees Act.” UM #2-75

“[T]he determining factor on whether or not the nonexempt faculty members of the College of Engineering should be included in the appropriate bargaining unit for the purpose of collective bargaining shall be the desire of the nonexempt faculty members.” UD #11-76

“Where ... a consideration of the factors listed in the statute indicates that the employees may be placed in a single unit or multiple units, the determining factor should be the desires of the employees.” UD #8-77

See also UDs #10C-74 and #55S-74.

33.41: Exclusion from Unit - Managerial [See also 16.12.]

The Superintendent and the Assistant Superintendent of the School and the Director of Counseling were excluded from the bargaining unit because they perform management functions. Also excluded were the Institutional Teacher and the Registered Nurse. UD #26-74

Deans and above are excluded from the bargaining unit because of their management orientation, but Department chairmen are included in the bargaining unit even though some exercise more supervisory functions than do some deans. Eligibility to participate in faculty governance was used as a criterion for inclusion in the faculty bargaining unit. UD #67S-74

“[P]ursuant to national labor policy, ... the Montana Act specifically excludes supervisory and management employees from the definition of ‘public employee.’ Section 39-31-103(2)(b)(iii), MCA.” UC #6-80 Montana Supreme Court (1985)

See also UDs #22-77, #1-79, #4-79, #14-80, and #9-83; UCs #1-77 and #2-83; and ULP #29-82.

33.42: Exclusion from Unit - Supervisory [See also 16.32 and 46.92.]

“[T]he employer attempted to show changes in duties and responsibilities of the position over a period of time and here they also stressed the emphasis ... placed on reorganization and supervisory responsibilities. I made no findings related to those propositions because the question is whether these employees are supervisors under the Act’s definition at the time of the hearing.” UC #7-80

“There is no supervisory exclusion under the Nurses Collective Bargaining Act, but prior to the time of the hearing the parties voluntarily entered into a stipulation that the unit ‘is appropriately comprised of Registered Nurses excluding supervisors. Further, the parties agree that ‘supervision’ shall be as defined in the Montana Collective Bargaining for Public Employees Act, Section 39-31-103(3), MCA.” UC #3-79

“The test to be applied when considering the question of the inclusion or exclusion of supervisory employees or management officials in grandfathered units shall be two pronged: (1) first a determination must be made whether or not the position in question is a supervisory or management official; (2) if the position is determined to be a supervisory or management official then the second question to be answered is whether the inclusion of that position in the unit creates actual substantial conflicts which result in compromising the interests of any party to its detriment. If the inclusion does result in a substantial conflict which results in compromising the interest of any party to its detriment, then the position must be excluded from the unit.” UC #1-77

See also UD#s #26-74, #61-74, #66S-74, #36-75, #18-76, #24-76, #8-77, #17-77, #21-77, #22-77, #22-78, #24-78, #1-79, #4-79, #7-79, #26-79, #29-79, #32-79, #1-80, #14-80, #23-80, #12-81, #22-81, and #9-83; UC#s #6-80, #3-83, #5-83, and #2-84; and ULP#s #2-73, #3-73, and #29-82.

33.43: Exclusion from Unit - Confidential [See also 16.22.]

“[T]here is no basis for exclusion of a ‘confidential employee’ under the Public Employees Collective Bargaining Act.” UD #18-76

“[F]rom 1973 to 1979 there was no provision in the [Montana Public Employees Collective Bargaining] Act for confidential exclusions, although the Legislature had previously considered it; therefore ... [they] should be construed narrowly.” UD #7-80

“At the time of the previous unit determination (#18-76), the Act contained no exclusion for confidential employees. However, in 1979 the Act was amended to include an exclusion of confidential employees.” UD #8-83

See also UD#s #6-74, #25-74, #30-74, #6-75, #6-77, #22-77, #1-79, #4-79, #18-79, #24-79, #27-79, #1-80, and #1-82 and UC #6-79.

33.45: Exclusion from Unit - Other [See also 16.4.]

Teachers were excluded by oversight from S.B. 446. The nature of the employer is used to determine which act provides authorization. UD #54-74

“A recognition clause which lists certain specified inclusions--position by position--and excludes all others is not the equivalent of a clause which lists certain specified exclusions and includes all others.” ULP #19-78

See also UD#s #4-74, #13-74, #36-75, #21-77, #24-78, #1-79, #6-79, #26-79, and #7-80.

34. BARGAINING UNIT**34.12: Types of Units - Craft [See also 41.132.]**

“I find that historically, for the last ten years before filing of this petition, there have been two labor organizations which have represented all of the

Maintenance Men I through V and Supervisors in all of the eleven divisions of the Montana Department of Highways.... There has been the Craft Council unit and the AFSCME unit.” DC #5-75

“Beginning in approximately 1964 Defendant Department [of Highways] recognized the Craft Council as representative of some of its maintenance employees....” DC #5-75 District Court (1979)

“The issue is whether the Plumbers and I.B.E.W. are bound by the craft council contract. This hearing examiner finds the complainants bound by the craft council contract.” ULP #26-79

“In May, 1959, the Craft Council made a formal request to the Highway Commission to be recognized as the sole bargaining agent for their union members. It is obvious that the Employer agreed to the request, for a written agreement between the Craft Council and the Employer was executed October 29, 1959.” DC #2-81

See UD#s #15-74, #49-74, and #42-75.

34.13: Types of Units - Departmental

See UD#s #6-74, #9-74, #10C-74, #11-74, #14-74, #21-74, #25-74, #26-74, #31-74, #36-74, #42-74, #45-74, #50-74, #53-74, #58-74, #66S-74, #31-75, #5-77, #22-77, #21-78, #18-79, and #27-79; DCs #5-75 and #2-81; and DC #5-75 District Court (1979).

34.15: Types of Units - Office and Clerical [See also 15.18, 15.26, 15.3, 15.54, 15.63, 15.84, and 15.932.]

See UD#s #18-76, #18-77, #1-79, and #24-79 and DC #15-79.

34.16: Types of Units - Professional [See also 15.12, 15.21, 15.27, 15.6, 34.4, and 46.91.]

See UD #56S-74.

34.18: Types of Units - Service and Maintenance [See also 15.17, 15.25, 15.53, 15.83, and 15.933.]

See UD #29-79; DC #5-75; and DC #5-75 District Court (1979).

34.21: Types of Units - Wall-to-Wall

“There was no wall-to-wall unit and such a unit could be established only in accordance with the law and the board’s regulations. Thus such a unit would not be ‘appropriate’ for an election.... The Montana Public Employees Association thought the question was whether there could be an election in the wall-to-wall unit and the Teamsters and Butte-Silver Bow thought the question was whether there should be such an election.” DC #22-77 District Court (1978)

See also UD #22-77 and DC #22-77.

34.31: Employee Categories - Certificated

See UM #1-75.

34.32: Employee Categories - Classified

See UD#s #62-74 and #64S-74.

34.33: Employee Categories - Probationary [See also 16.45.]

“Margaret Nye was terminated from her probationary status position as an office clerk V for performance deficiencies related to that position.... The fact that she chose to attempt to advance within the Department did not eliminate her permanent status in the permit clerk position.” Nye v. Department of Livestock (1982)

See also UD #26-79.

34.34: Employee Categories - Part-Time [See also 16.43.]

See UD #4-74, #13-74, #56S-74, #60S-74, #18-79, and #26-79.

34.35: Employee Categories - Federally-Funded [See also 15.121, 15.35, 15.45, 15.55, 15.64, and 15.85.]

See UD #26-79.

34.39: Employee Categories - Temporary [See also 16.44 and 16.46.]

"It is a well established principle of labor law that parties to a collective bargaining agreement may negotiate the composition of their bargaining unit, and the record in this matter indicates this is exactly what the Montana University System and the International Brotherhood of Painters have done regarding temporary employees." DC #8-81

"The requirement that the temporary employees pay agency shop fees to the exclusive representative by itself leads to the conclusion that temporary employees (after 347 hours) are in the bargaining unit. Only when a person is in a bargaining unit can that person be required to pay agency shop fees to the exclusive representative.... The availability of the contractual grievance procedure for use by temporary employees after 347 hours also proves that they are being represented by the exclusive representative. Only the exclusive representative can negotiate with the employer. Only the exclusive representative and the employer can enter into a collective bargaining agreement. The fact that the contract gave grievance procedure rights to temporary employees after 347 hours means that the rights of temporary employees were being negotiated by the exclusive representative.... The fact that the temporary employees wage rates are established under the contract also shows that the temporary employees are in the bargaining unit." DC #8-81 District Court (1982)

34.41: Professional - Definition [See also 33.336.]

See UD #36-74.

35. ELECTION**35.14: Consent Agreements - Waiver of Procedure [See also 09.6.]**

UDs #5-77, #22-77, and #21-78.

35.21: Refusal to Consent to Election - Employer Refusal

See UD #11-77.

35.311: Conduct of Elections - Voter Eligibility Criteria - Discharged or Resigned Employees

"[N]o employee who was a member of the proposed unit on the date of the filing of the petition is presently employed by School District No. 2, Dupuyer, Montana.... [The entire teaching staff--Mr. and Mrs. Edward Gierke--resigned on February 3, 1976 effective at the end of the school term.] In conformity with this Board's rule MAC 24-3.8(18)-S8180(4)(a) which provides that the employees eligible to vote in an election are those who were within the unit on the date of the filing of the petitions excluding those employees who have voluntarily terminated their employment between the filing date and the date of the election, we have determined that there are no eligible voters to participate in a representation election." UD #8-76

35.312: Conduct of Elections - Voter Eligibility Criteria - Laid-Off Employee

"The ultimate question before the hearing examiner is whether nine challenged ballots ought to be counted in this decertification election.... The determination will be based on whether the nine employees who cast these ballots were within the bargaining unit on the date the first petition in this

matter was filed, April 3, 1981.... Even though inclusion on the payroll on the date the petition was filed is usually a key factor in determining voter eligibility, it is not a mandatory criterion to be applied without discretion. Due to the seasonal nature of these employees' work and the specific contract language pertaining to this situation, the hearing examiner concludes that these employees' pay status on the date the petition was filed is not controlling in this case." DC #8-81

35.315: Conduct of Elections - Voter Eligibility Criteria - Part-Time or Temporary Employee

The NLRB has determined that "where the dual-function or part-time employee works a sufficient number of hours to share a substantial community of interest with other unit employees, the employee should be part of the unit and therefore allowed to vote in the election.... However, the rule is not sound nor does it promote the best interests of either labor or management if the dual-function employee [who has a special relationship to management, which can reasonably be said to lead to some degree of management loyalty] is allowed to vote in an election among unit employees." UD #18-79

See also UD #21-77 and DC #8-81.

35.321: Conduct of Elections - Election Mechanics - Eligibility Cut-Off Date

Ms. Peura "was not a part of the unit when the petition was filed. That she became or was scheduled to become, a full-fledged unit employee two months later is not reason to allow an exception." UD #18-79

"Rule 24.26.644(2) ARM states: 'The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition.' ... [I]n accordance with rule 24.26.644(2) ARM, hours of employment after April 3, 1981 (the filing date specified in the Notice of Election) cannot be considered qualifying for purposes of voter eligibility in this election." DC #8-81

See also UD #21-77.

35.322: Conduct of Elections - Election Mechanics - Eligibility List

See UD #5-77.

35.323: Conduct of Elections - Election Mechanics - List of Names and Addresses

"MAC 24-3.8(18)-S8180(4)(b) provides, 'At least 7 days prior to the election, the employer shall furnish to each labor organization which is party to the proceedings a list of names and addresses of the employees eligible to vote'." UD #5-77

In UD #5-77, "This Board adopted the reasoning of the NLRB in the Excelsior Underwear, Inc., decision, 152 NLRB 1236, 61 LRRM 1217 ... that 'access to employee names and addresses is fundamental to a fair and free election regardless of whether the employer has sent campaign propaganda to employees' homes'.... There was absolutely no attempt on the part of the City to comply with this Board's rule [MAC 24-3.8(18)-S8180]." UD #18-76

35.325: Conduct of Elections - Election Mechanics - Notice of Election

"The notices given for the elections concerned were adequate." UM #5-76

35.329: Conduct of Elections - Election Mechanics - Secrecy of Ballot

See UD #21-77.

35.330: Conduct of Elections - Election Mechanics - Timeliness

See UDs #11-77 and #21-78.

35.37: Conduct of Elections - Challenged Ballots

“[C]hallenges made of certain ballots cast in the election ... [were] irrelevant as two votes could in no way have altered the outcome of the election.” DC #9-77

See also UD#s #18-76 and #22-77 and DC#s #11-79 and #8-81.

35.372: Conduct of Elections - Challenged Ballots - Right to Challenge

See UD#s #6-77 and #21-77.

35.42: Election Objection Procedures - Time for Filing

“The Petitioners failed to timely challenge the election as required by MAC 24-3.8(18)-S8260.” UM #5-76

35.44: Election Objection Procedures - Investigation of Elections

See DC #9-77.

35.45: Election Objection Procedures - Stipulations

“The Board’s regulations allow informal conferences, much in the nature of a pre-trial conference, to be used to define issues in a contested case. MAC 24-3.8(2)-S810 (Rule 17). While I would like to dismiss the above two matters pro forma, I am compelled to address Complainant’s new contentions [raised for the first time in the Complainant’s Brief] because of the lack of a pre-hearing order or written stipulation defining the issue(s) in this case.” EC #6-74

35.48: Election Objection Procedures - Stay of Proceedings

See ULP #20-78 Montana Supreme Court (1979).

35.5: Objections to Election [See also 72.22.]

“[T]he Board has promulgated certain regulations which show ... the Board’s intentions to insure public employees’ freedom of choice in a representative election and the Board’s concurrence with the principles of the General Shoe Doctrine. For example, MAC 24-3.8(18)-S8260(12) allows a party to ‘file with the Board objections to the conduct of the election or conduct affecting the results of the election’ and MAC 24-3.8(18)-S8220(8) prohibits electioneering of any kind in a polling area--violation of the regulation being grounds for setting aside the election.” EC #6-74

“The question here then is whether or not the requisite ‘laboratory conditions’ were present during the organizational campaign and election.” EC #6-74

“A democratic election for a bargaining unit must stand if it goes unchallenged within the five (5) day period as required by our rules, until a proper decertification petition can be brought not more than 90 days nor less than 60 days before the present contract’s [next] termination date.... This is mandatory for stability.” UM #5-76

35.511: Objections to Election - Conduct Interfering with Election Choice - Proximity in Time to Election

See DC #9-77.

35.513: Objections to Election - Conduct Interfering with Election Choice - Matters Considered in Other Proceedings

See DC#s #9-77 and #5-78.

35.515: Objections to Election - Conduct Interfering with Election Choice - Objections Involving Mechanics of Election

“There is no question that the location of the polling area [in the lunch-room] was not ideal. But unfortunately, in order to make a polling area accessible to the employees this Board is forced to accept areas which are not ideal. There is ... no testimony showing that the higher level of noise interfered with the election.” DC #10-79

“Because the Notice of Election was not able to be posted for the length of time specified in ARM 24.26.659, and because the outcome of the election was changed as a result of an employee not properly following the voter instructions contained in the Notice of Election, the Employer requests that the results of the original election be set aside and a new election conducted.” UD #7-84

“The objections of the Montana Education Association to the conduct of the decertification election at Western Montana College are without merit and are hereby dismissed.” DC #4-83

35.5212: Objections to Election - Conduct by Either Party - Pre-Election Propaganda - Employer Statement

See DC #9-77.

35.5214: Objections to Election - Conduct by Either Party - Pre-Election Propaganda - Misrepresentation Concerning Material

In its campaign literature, the Montana Public Employees Association (MPEA) wrote that “‘the dues difference is part of the reason [employees might have for preferring MPEA over AFSCME], but the big reason tends to be the national control of the unions and the fact that a majority of their [AFSCME’s] dues leave the state’.” If AFSCME had established that the statement was false, a new election may have been required. UD #10C-74

“In Warner Press vs. NLRB we find: ‘...only those misrepresentations which are material, made at a time which prevents effective reply, and are of a fact within special knowledge of the party making it, require that an election be set aside’.” MPEA asserted that “‘after months of delay you finally have a contract in your hands. Isn’t it coincidental that you would receive it just before the election.’ Obviously designed to cast doubt on the sincerity and attitude of the Retail Clerks union, this statement appeared on the day of the election, preventing an ‘effective reply.’ This statement is not, however, a misrepresentation of fact but an obvious, biased interpretation of an established fact which in no way is cause to set aside the election.” DC #9-77

In Hollywood Ceramics Company (1962), the National Labor Relations Board ruled that an “‘election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election. However, the mere fact that a message is inartistically worded and subject to different interpretations will not suffice to establish such misrepresentation as would lead us to set the election aside.” DC #17-79

“The Hollywood Ceramics test was adopted [by the Board of Personnel Appeals] in 1975 in Laborers International Union of North America, Local 1334 v. MPEA (ULP #10-74) and implicitly followed in In the Matter of DC #9-77.” DC #17-79

“Even taken together, these ‘inartistically worded’ bits of information are no obstacle to upholding this election. A certain amount of puffing is tolerable in any election campaign, and if there is some exaggeration of the facts in

the election issues, it is up to the opposing party to present its rebuttal. Indeed, the opposing party is just as free to appeal to the emotional sense among the voters by being vigorous and exerting a certain amount of exaggeration in its view of the issues presented the employees.” DC #17-79

See also ULP #10-74

35.5216: Objections to Election - Conduct by Either Party - Pre-Election Propaganda - Timing, Opportunity to Rebut

“The concern with this Board has been, just as it has been with the National Labor Relations Board in the private sector, to preserve employee free choice by invalidating an election only when pre-election propaganda is so misleading and the circumstances are such as not to allow an effective rebuttal that to uphold the election would not be substantially likely to represent true employee choice.” DC #17-79

See DC #9-77.

35.5218: Objections to Election - Conduct by Either Party - Pre-Election Propaganda - Other

“The petitioning employees are dissatisfied with the bargaining representative but have not disaffiliated with the bargaining representative, but only wish to get a chance for a new election to vote the representative out. This amounts to a ‘recall election’ under the guise of an election challenge. Our rules do not allow for a ‘recall election’.” UM #5-76

35.522: Objections to Election - Conduct by Either Party - Electioneering within Restricted Time Period

“The Board of Personnel Appeal’s Notice of Election does not contain a rule or regulation in regard to electioneering by management or labor prior to the date set for election.... However, the Board’s practices closely parallel the practices and precedents established by the NLRB. Within that context electioneering is an acceptable procedure.” UD #7-79 (Letter from Robert Jensen to Kenneth Wilson)

“[P]rolonged conversation by representatives of any party with prospective voters in the polling area ‘constitutes conduct which, in itself will invalidate an election’ [according to the National Labor Relations Board’s Michelm rule].... But the rule does not apply to ‘conversations with prospective voters unless the voters are ... in the polling area or in line waiting to vote.’ The rationale behind the ruling is that the time immediately before the casting of a ballot ought to be that of the employees. This prevents any type of coercion or pressure at the last minute.” DC #10-79

35.5231: Objections to Election - Conduct by Either Party - Electioneering at or Near Polls - Oral Communication to Voters

“Had representatives of either the union or the employer engaged in prolonged conversation with these employees in the polling area prior to their voting, then I think, grounds would have existed for setting aside the election. See Michem, Inc., 170 NLRB 362, 67 LRRM 1395 (1968). But the record ... does not establish this.” UD #20-74

35.53: Objections to Election - Conduct by Employer [See also 72.22.]

“No grounds exist for setting aside the election conducted by the Board of Personnel Appeals.” EC #6-74

“Analyzing each of the allegations, this hearing examiner concludes that the city was neutral and that the necessary laboratory conditions did exist.” DC #10-79

35.532: Objections to Election - Conduct by Employer - Discriminatory Treatment or Threat Thereof

“Although Slim Campbell was laid-off before an employee less senior than he, the County had not laid off by strict seniority in the past. In fact, in the winter of 1983-84, Campbell was kept on throughout the winter while more senior men were laid-off.” ULP #2-85

“Lay-offs will always have some effect on organizational campaigns, but all lay-offs are not proscribed by the act.” ULP #2-85

35.533: Objections to Election - Conduct by Employer - Equal Access Rules

“This Board does not want to place a union in the position of having to move to postpone an election in order to preserve a right guaranteed it by the rules of this Board.... The Teamsters were remiss in failing to notify this Board or the Employer that it had not received a list of the eligible voters ... [but that is] not sufficient for this Board to not grant the Teamsters’ Motion to set aside the election conducted....” Therefore, the Hearing Examiner ruled that “the representation election of June 30, 1977 ... be set aside and a new election be held.” UD #18-76

See also UD #5-77 and #21-78 and ULP # 36-77.

35.534: Objections to Election - Conduct by Employer - Favoritism or Declaration of Union Preference

See ULP #36-77 and DC #9-77.

35.537: Objections to Election - Conduct by Employer - Prediction of Detrimental Result of Unionization

See UD #21-78.

35.541: Objections to Election - Conduct by Employer - Conferral or Promises of Benefits

“The NLRB has held that: ‘the granting of employee benefits during the period immediately preceding an election is not per se ground for setting aside an election.... The burden of showing these other factors [that the time of the announcement was governed by factors other than the pendency of the election] is on the employer.’ International Shoe Corporation, 123 NLRB 682, 43 LRRM 1520 (1959).” UD #20-74

35.56: Objections to Election - Employee Conduct

“We cannot create a double standard for first-time elections. We must place on all voters the duty to become informed.” UM #5-76

35.6: Bars to Election [See also 31.5 and 32.14.]

See ULP #3-82.

35.61: Bars to Election - Unfair Practices

“[T]he Board may schedule elections at its discretion, there is no rule relative to scheduling, and when [unfair labor practice] charges are pending it is the Board’s decision whether such charges are blocking. In ULP #33-77, the Board felt the charges were not blocking because of the time and ability to rebut and overcome any damage caused by the alleged actions on which the charge was based. No evidence exists that the laboratory conditions surrounding the election were not maintained.” DC #9-77

“The ‘laboratory conditions’ under which the Board of Personnel Appeals conducts a decertification election occur where there are no pending charges against the employer, of conduct constituting an unfair labor practice. The purpose of the Board of Personnel Appeals in seeking laboratory conditions is to accomplish a fair election and to determine the uninhibited desires

of the employees.... In seeking the laboratory conditions, the Board of Personnel Appeals is following the lead of the NLRB ... [by using] the 'blocking charge' rule to the effect that it will not conduct an election to determine the bargaining representative of a group where there is pending against the employer charges of unfair labor practices." ULP #20-78 Montana Supreme Court (1979).

See also UD #21-78 District Court (1978) and DC #5-78.

35.8: Remedy [See also 01.29.]

"In her report, the investigator recommended that 'the election in the matter of DC #5-82, held March 24, 1982, be considered null and void.' There is case law authority from the National Labor Relations Board which would allow such a recommendation to be implemented in a factual situation such as this." DC #5-82

35.81: Remedy - New Election [See also 74.38.]

"This Board's rule, MAC 24-3.8(10)-S8089(11)(b), reads: '(b) after hearing the Board shall issue its determination as to the appropriateness of the clarification or modification petitioned for. If the clarification or modification petitioned for is found not to be appropriate the findings and conclusion shall give specific reasons therefore. If the clarification or modification is found to be appropriate the Board shall schedule an election or pre-election conference.' (emphasis added) We therefore must interpret the above quoted rule in question to be applicable to only those unit clarifications and modifications in which an election would properly be called for. We cannot logically interpret the rule to apply to all unit modification or clarification proceedings." UM #1-75

"Local No. 45 was aggrieved by not receiving the names and addresses of eligible voters and accordingly is entitled to a new election." UD #18-76

It was ordered "that the representation election of May 26, 1977... be set aside and a new election be held." UD #5-77

"[T]he election in the matter of DC #5-82 held March 24, 1982 is declared to be null and void.... [A] second election in this matter is to be held by the Board of Personnel Appeals as soon as is practicable." DC #5-82

"Because of the above objection, it is ordered a second election will be conducted...." UD #7-84

35.82: Remedy - Certification

See UD #10C-74; EC #6-74; and DCs #10-79 and #17-79.

36. UNIT CLARIFICATION OR MODIFICATION

36.1: Clarification of Unit

"[T]he Union should have requested negotiations with the City to decide whether ... [the] position [in question] was 'covered' ... or, if a satisfactory solution could not be reached, ... [the Union] could have filed a Petition for Unit Clarification...." ULP #17-76

"Respondent contends that questions of representation cannot be reviewed by this Board in a unit clarification proceeding.... [H]owever, there were no questions of representation raised by the filing of the unit clarification petition itself. The question presented by the petition was what is the appropriate unit under the law, not who is the exclusive representative." UC #2-83

36.111: Clarification of Unit - Procedures - Filing of Petition

"This Board has every intention of recognizing clarification petitions and does so when clarification is in issue but we recognize only those brought

by the bargaining representative as does the National Labor Relations Board.” DR #2-76

“A review of the applicable rules shows that the rules allow petitions to be filed by a ‘labor organization or a group of employees.’ (See: 24-3.8(10)-S8080(8)(a))” DR #2-76

“A joint petition for unit clarification and a motion to waive ARM 24.26.630(1)(b) was filed Their motion to waive our rule which prohibits the filing of unit clarification petitions during negotiations was granted and a formal hearing ... was held....” UC #4-80

36.112: Clarification of Unit - Procedures - Content

“The petition wanted this Board to exclude the Chief Deputies. Chief Deputies are already excluded from the unit by virtue of the addendum and the collective bargaining agreement. We therefore have no jurisdiction over the Chief Deputies in this proceeding. We therefore cannot rule them out of the unit because they are already out.” UC #1-83

36.113: Clarification of Unit - Procedures - Need of Showing of Interest

“ ‘The petition shall be accompanied by proof, consisting of authorization cards, or copies thereof, which have been individually signed and dated within six (6) months prior to the filing of the petition, that the desires for organization represent thirty percent (30%) of the employees that are not presently represented’.” DR #2-76

36.114: Clarification of Unit - Procedures - Review by Board of Personnel Appeals

“In order to properly discuss a unit clarification it is necessary to consider the events and factors which were involved in determining the appropriateness of this unit.” UM #2-75

“The National Labor Relations Board will dismiss a unit clarification petition if it raises an issue that can only be resolved by an election.” UC #1-81

36.115: Clarification of Unit - Procedures - Timeliness

“To prohibit the filing of a unit clarification petition during the term of an agreement would, in effect, proscribe all such filings.” UC #2-83

See also UD #11-77.

36.12: Clarification of Unit - Basis for Clarification

“There are several reasons for the Board allowing unit modification petitions: (1) when the duties and responsibilities of a position have changed since the original unit determination, as to create some doubt about the continuing appropriateness of those positions included; (2) if the employees petition that they were originally inappropriately included; (3) changes in political subdivision organization; or (4) changes in union structure.” UM #2-75

36.121: Clarification of Unit - Basis for Clarification - Change in Employee Status

“[T]he agreement between the parties contains a clear recognition clause and ... the job duties and job relationships have not changed. Therefore, I recommend ... the Board of Personnel Appeals not proceed in this matter because there is no change in the job duties and relationships. Also, the dismissal of the union unit clarification petition would not be disruptive to the established collective bargaining relationship and would foster the policy of Montana’s Collective Bargaining for Public Employees Act.” UC #1-81

“[T]he two positions [Street and Sanitation Division Manager and Street and Sanitation Superintendent] were the same in the respects relevant to this

matter because the examples of duties statements on their position announcements and the job description were identical save reference to position title.” UC #5-83

See also UM #2-75 and UCs #8-79, #4-80, #6-82, and #2-84.

36.123: Clarification of Unit - Basis for Clarification - Other

“[I]n the event an election is called to determine the appropriate bargaining representative, the categories of substitute teachers and other part-time teachers are not defined with sufficient clarity to determine the eligible voters.” UM #1-75

“Unit clarification, ... except in the matter of accretion, is a matter between the bargaining representative and the employer.” DR #2-76

“[W]e can entertain any petition which shows that as a direct result of this Board’s actions there is a threat of job security or financial loss. In order to protect the existing bargaining representative, however, such petition must be accompanied by a sworn affidavit setting out the facts which lead to this threat of job security or financial loss. If, upon investigation of this Board the assertion is shown to be truthful and accurate, we will then hold a hearing in order to rectify the situation.” DR #2-76

“[T]he major issue ... was whether or not the positions of the Battalion Chiefs, Training Officer, Communications Officer, Maintenance Officer, Fire Marshal, and Fire Captains are properly included in the current bargaining unit for the Billings Fire Department.” UC #1-77

“Section 59-1606(1) RCM 1947, provides that the Board has the duty to investigate a representation petition and if it has ‘reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing.’ In this case, the Board had reasonable cause to believe a question of representation existed mainly because of the lack of substantial references to Center teachers in the contract.” UD #19-75

“If the Union did not choose to bargain on the proposed change [related to the subject of the recognition clause or the composition of the bargaining unit represented by Firefighters Local No. 448], it was under no obligation to do so. The City’s recourse would appear to be to file a petition for unit clarification under the rules of this Board.... [I]n my opinion, it is not a condition of employment; therefore, I must conclude that our statute does not require bargaining on the subject.” ULP #19-78

Petitions for unit clarification were filed claiming that certain positions were supervisory and should be excluded from the units. See UCs #3-79, #6-80, and #7-80.

One of the issues was “whether the administrative secretary to the administrative assistant to the Board of Commissioners of Lewis and Clark County is a confidential labor relations employee under 39-31-103(12) MCA.” UC #4-79

“After the representative of the employees changed, the Labor Relations Bureau of the Montana Department of Administration filed a petition for unit clarification of the labor bargaining unit before the Board of Personnel Appeals.” UC #6-80 Montana Supreme Court (1985)

A petition was filed “requesting that the bargaining unit represented by Respondent be declared inappropriate because it is comprised of employees who are excluded under Section 39-31-103(2)(b) MCA.” UC #2-83

36.21: Modification of Unit - Procedures

“[A] unit decision of the National Labor Relations Board ‘... may be altered by agreement of the parties, if the process of alteration involves no disruption of the bargaining process or obstruction of commerce and if the Board

does not disturb the agreement in a subsequent representation proceeding.' I can see this Board should follow the above teachings." UC #1-81

36.212: Modification of Unit - Procedures - Content

"[T]his decision to exclude the petitioners is based on the fact that they were able to present testimony and evidence illustrating differences between their positions and the rest of the unit in every category [managerial, community of interest, history of collective bargaining, desires of employees]. It is not my intent to establish a Board precedent to allow every employee who may feel a union is not adequately representing his perceived interest to file a unit modification petition." UM #2-75

36.214: Modification of Unit - Procedures - Review by Board of Personnel Appeals

"[T]he National Labor Relations Board enumerated the factors to be considered [in the cited cases] and applied them to both unit determinations and unit modifications. Based on National Labor Relations Board precedents I feel it is appropriate to apply the community of interest factors to this unit modification case." UM #2-75

See also UD #22-77.

36.215: Modification of Unit - Procedures - Timeliness

See UD #11-77.

36.221: Modification of Unit - Forms of Modification - Severance of Employee Group

"The rule also addresses itself to a petition from a labor organization requesting a clarification of the unit from this Board. But I cannot find where our rules provide for a dissident group of employees to use unit modification or clarification in order to remove themselves from a bargaining unit. That was never the intent of our rules." DR #2-76

See also UD #6-78.

36.222: Modification of Unit - Forms of Modification - Merger of Employee Group - Expansion

"[T]he rule is addressing itself to accretions. That is, the rule is addressing itself to a petition from employees who ... were not included in a certified or employer recognized unit." DR #2-76

"[T]he City must recognize that although many provisions can be negotiated into a master contract, certain items ... must be negotiated with the individual craft representatives and placed in separate addendums to the master contract." The Board ordered that the "unit shall consist of 'all plumbing inspectors and electrical inspectors employed by the city of Great Falls', and that an election be held to determine the representative desired by those additional employees in the unit included by this modification." UD #49-74

"Clearly the group of employees involved in the March 22, 1977, election and the group of employees involved in the instant petition comprise the same bargaining unit.... That the unit has increased from 9 to 16 employees does not affect this fact." UD #11-77

36.223: Modification of Unit - Forms of Modification - Unit Consolidation

See UD #11-77.

36.34: Effects of Clarification or Modification - On Subsequent Representation Rights

Related to bargaining the water clerk and the water clerk-meter reader out of the bargaining unit: "if one union agrees with the employer not to represent a group of employees, the employees are still free to be represented by all other unions or [to] form their own independent union.... The only thing that has been waived is AFSCME's opportunity to represent those employees." UC #1-81

37. DECERTIFICATION

37.1: Petition

“The petitioner is requesting decertification rather than petitioning for New Unit Determination.” UD #19-75

The petitioner “had no knowledge of the existing working agreement [between the Employer and the police officers] because it was not filed with this Board in accordance with ARM 24.26.501.... [T]he petition is hereby amended to read Petition for Decertification. Because ... [it is a] Decertification Petition, the incumbent representative ... shall appear on the ballot.” UD #7-79

“The difference in procedures between a Petition for Decertification and a Petition for Unit Determination and Election is not significant and no harm can be shown to the Employer. The existence of a harmless error is no basis for the dismissal of the petition.” UD #7-79

“[T]he statute that gives life to a decertification proceeding (essentially what the petitioner is attempting to implement here) provides that the basis for such a proceeding is the assertion that ‘... the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit....’ (Section 39-31-207(1)(a)(ii))” CC #2-81 District Court (1983)

“The purpose of a decertification petition is to test whether the exclusive representative still represents a majority of the members of a bargaining unit.... A decertification proceeding does not determine what the appropriate unit should be, 24.26.655(2) ARM, but merely what the bargaining unit is and after an election whether the members still want the same exclusive representative, a different exclusive representative, or no representative.” DC #8-81 District Court Decision (1982)

37.11: Petition - Contents [See also 33.323.]

“Petitioners seek to decertify a part of an established bargaining unit. Such a procedure is contrary to the well recognized rule against partial disestablishment and fragmentation of a bargaining unit. Such a procedure, if allowed, would promote, not prevent, strife, unrest and instability within the collective bargaining area.” DC #5-75

“[T]he hearing examiner was in error in deciding that this Board’s present rules established a procedure for partial decertification of an existing bargaining unit.” Subsections (e)(ii) and (f) of Regulation 24-3.8(14)-S8090(1) (the present rule on decertification) “refer to ‘the unit’ meaning the entire certified or recognized bargaining unit.” DR #1-76

“[I]mmediately upon filing the petition the two other parties raised a question as to the propriety of the unit. That question did not belong in these proceedings and the examiner and the board, under its own rules, were not authorized to deal with it as part of the proceedings.” DC #22-77 District Court Decision (1978)

“Judge Bennett ruled in DC #22-77 ... that once a decertification petition is filed with the Board, the Board decides whether reasonable cause exists to believe there is a question of representation. If there is, an election is to be held. Questions of the propriety of the unit do not belong in such proceedings and the Board, under its own rules, is not authorized to deal with it as part of the proceedings.” DC #11-79

“The error made on the petition [that is, not specifically detailing all locals of the union] ... was surely not intentional and must be considered harmless.” DC #15-79

“This Board has adopted a policy which is consistent with the National Labor Relations Board in denying attempts at partial decertification of recognized or certified bargaining units.” DC #2-81

“Rule 24.26.644(2) ARM states: ‘The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition.’ ... [I]n accordance with rule 24.26.644(2) ARM, hours of employment after April 3, 1981 (the filing date specified in the Notice of Election) cannot be considered qualifying for purposes of voter eligibility in this election.” DC #8-81

See also UM #3-77 and DCs #2-75, #6-76, #12-77, #4-78, #3-79, and #4-79.

37.12: Petition - Standards

“If a petition does not allege that the present bargaining representative does not represent the interests of the majority of the employees in the present bargaining unit or if a petition is not accompanied by a showing of proof of 30 percent of the entire unit, it is not a proper decertification petition under our rules.” DR #1-76

“A change in administration or a change in personnel, in itself, is not a factor in determining an appropriate bargaining unit.” DC #6-78

“All efforts, once a decertification petition is filed, should be directed toward expediting the election process to its finality.” DC #11-79

37.13: Petition - Time for Filing

“What the petitioners are requesting here is a partial decertification of a bargaining unit.... [S]uch a petition is cognizable under our rules, but only if the condition of a decertification petition is met. (See DR #1-76.) That is, the 60-90 day rule is complied with. That condition is not met in this petition.” DR #2-76

The petition was “filed timely during the window period.” DC #15-79

37.14: Petition - Notice

“The stipulation is valid, it waived the Board rules on the time required for posting the Notice of Election. Therefore, the Montana Education Association objection to the election is without merit and the election should be certified.” DC #4-83

37.15: Petition - Showing of Interest [See also 32.2.]

“[S]tability in labor relations and prevention of strife and unrest are not the only goals of our Board. We are not callous to employees’ desires as to representation. That is of paramount concern to us. We cannot, however, lightly set aside an election result because of a disagreement with the bargaining unit’s representative. The vote of the majority who participated in the election must also be protected.” UM #5-76

Referring to Section 59-1606, “the employees are to decide if they wish the incumbent bargaining representative to continue to represent them. The incumbent, therefore, is an essential party to the decertification proceedings.... This Board shall no longer require that the incumbent bargaining representative present a 10 percent showing of interest in order to be placed on the ballot in a decertification proceeding.” DC #8-77

“[C]ard signers will be bound by the clear language of the card unless they have been given misrepresentations that clearly preclude their signatures.... [A]lso ... before the courts will overturn the results of a showing of interest by authorization cards, there must be evidence of a sufficient number of signers

having been given misrepresentations so as to find that a majority (or other applicable percentage) of the signers did not support the petitioned issue....” ULP #14-77

“The Hearing Examiner sees nothing prejudicial to the rights of those signing the cards by the mere use of the term ‘vote of confidence,’ as it appears quite fair to use that term in the context of looking ahead to a representation election where all those supporting the Coalition would have the opportunity to so express themselves.” ULP #14-77

The Board of Personnel Appeals’ Rule 24.26.503 ARM states: “The proof of interest submitted with any petition shall not be furnished to any of the parties. The Board shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge.’ Therefore, an issue concerning the proper showing of interest may not be raised.” DC #15-79

“The concern of both this Board and the National Labor Relations Board is if the prima facie claims of representation are substantial [enough] to warrant the expense and effort of an election.” DC #15-79

“The mere filing of a decertification petition, at its very least, is a symbolic statement fulfilling the requirements of an interest statement.... A rival labor organization would not expend effort and money in a decertification election without a solid chance of winning.” DC #15-79

“Statements contained on the authorization cards which are related to the requirement of ARM 24.26.543(6)(b) surely conforms in spirit with the rule.” DC #15-79

“The issue in this matter is not to determine the appropriate unit but, instead, we must determine the existing unit.” DC #2-81

“Logically, it follows that once a bargaining unit is defined, the bargaining agent or exclusive representative may be discovered. The reverse may also be true.” DC #2-81

“The bargaining unit appropriate in a decertification election must be coextensive with either the unit previously certified or the one recognized in the existing contract unit.” DC #2-81

“In consequence of the long bargaining history, the exclusive recognition granted the Craft Council and the negotiation of a single labor contract, there exists only a single bargaining unit.” DC #2-81

“The appropriate bargaining unit consists of approximately 250 individuals. The Petitioners submitted individually signed proof-of-interest cards of at least 30 percent of five individuals (the Petitioners--sign and maintenance painters). Therefore, an insufficient number of individual proof-of-interest cards were submitted to file a decertification election in the appropriate bargaining unit.” DC #2-81

37.16: Petition - Standing

See DC #8-77.

37.2: Hearing

“The statute is clear, and restrictive, with regard to the hearing to be held upon the filing of a decertification petition... (Section 59-1606(1)(b)).... This provision, standing alone and taken at face value, would... limit the hearing to one particular question, i.e., whether there is a question of representation. If such a question exists then the board or its agent holds an election. The regulation derived from this statute [ARM 24.26.547] is not so clear and doesn’t follow the statute.” DC #22-77 District Court Decision (1978)

37.3: Dismissal of Petition

See UD #9-79 and ULP #20-78 and DCs #5-75, 11-79, and 2-81.

37.5: Decertification Election

“[I]n view of this Board’s investigation and the unfair labor practice charges filed prior to the filing of this decertification petition, an election will not be scheduled until this Board is assured that the necessary laboratory conditions are present.” ULP #20-78

See also UD #1-79 and #7-79; DCs #8-77, #22-77, #5-78, #6-78, and #15-79; ULP #36-77 and ULP #20-78 Montana Supreme Court (1979) and District Court (1981).

37.8: Effect on Bargaining Rights

“Allowing a section of a recognized or designated bargaining unit to be carved out from a larger unit would be counter-productive and run directly contrary to the stated philosophy of the Collective Bargaining Act.” DC #5-75

“To allow the challenges would be the equivalent of allowing the employer to petition to modify the existing unit.” DC #11-79

41. COLLECTIVE BARGAINING**41.132: Type of Bargaining - Coalition - Multi-Union [See also 34.12.]**

“The National Labor Relations Board has long held that a multi-bargaining group is only allowed by mutual consent.” ULP #26-79

“‘Where actual bargaining negotiations based on the existing multi-employer unit have begun, we would not permit, except on mutual consent, an abandonment of the unit upon which each side has committed itself to the other, absent unusual circumstances.’ (...Teamsters Local No. 70 (Granny Goose), Administrative Law Judge’s Decision....)” ULP #26-79

“The National Labor Relations Board has consistently held that two or more labor organizations may act jointly as the bargaining representative for a single group of employees.” DC #2-81

See also UD #39-74; DCs #2-75 and #5-75 and DC #5-75 District Court (1979).

41.2: Negotiator

“Section 39-31-301 MCA sets forth the identities of those responsible for bargaining with the exclusive representative: ‘The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representatives shall represent the public employer in collective bargaining with an exclusive representative.’” UC #4-79

41.21: Negotiator - Choice Of

“The record and the charge [that the Association attempted to force or require the School Board to terminate its selected representative] indicate the existence of a petition calling for the termination of the School Board’s collective bargaining representative. This is a very serious charge under both the Montana Act and the NLRA. The record fails to demonstrate who initiated and/or circulated and/or presented the petition. Without this evidence, the charge cannot be supported.” ULP #25-76

41.22: Negotiator - Authority [See also 09.11, 11.31, and 72.530.]

See ULP #17-77.

41.34: Bargaining Procedure - Reopening

If something is specifically stated in a collective bargaining agreement, then that topic is closed to further negotiations, and either party can refuse a reopening of the contract on that subject until the time specified for reopening of the contract. ULP #3-75

41.8: Duties of Successor Employer [See also 11.16, 46.15, 72.582, and 73.471.]

A joint City-County Library Board replaced the Billings City Library Board and it *is bound* by contract provisions negotiated by the prior board. ULP #13-75

See also ULP #17-77.

42: SCOPE OF BARGAINING

The hearing examiner “does not believe that the Act’s policy would be furthered by resolving the permissive-mandatory debate as an unfair labor practice.... The Act’s policies would be furthered if the parties are merely left to their agreement.” ULP #13-83

42.1: Mandatory Subjects [See also 53.11, 55.91, 72.54, 72.589, 73.45, and 73.477.]

“This Board has never attempted to establish a list of rules to be used to make a determination of whether a matter is a mandatory subject of bargaining as a panacea to this problem. It has chosen rather to take each problem case-by-case.... There is a definite trend, however, toward adoption of a balancing approach in determining what is and what is not a mandatory topic of collective bargaining.” ULP #13-76

“Mandatory subjects are those which regulate wages, hours and other conditions of the employment relationship, and, over which both parties must bargain in good faith.” ULP #43-79

“The fact that state law does not require a hearing for a non-tenured teacher does not proscribe it as a mandatory subject over which Defendant must bargain.” ULP #43-79

42.11: Mandatory Subjects - Case Law

The Kansas Supreme Court adopted a balancing test for determining mandatory and permissive subjects when it said: “The key ... is how direct the impact of an issue is on the well being of the individual teacher, as opposed to its effect on the operation of the school system as a whole’.” The Board has adopted this balancing test. ULPs #13-76 and #5-77

“[A]n employer has to meet all the items of the Westinghouse standard in order to be relieved of the duties to bargain....” ULP #9-83

See also ULPs #6-77, #20-78, #30-79, #31-79, #7-80, and #34-80.

42.12: Mandatory Subjects - Statutory

“Most Montana statutes relating to public employment are concerned with wages, hours and working conditions ... mandatory subjects....” ULP #5-77

“The obligation of a Montana public employer and the public employees’ representative under Title 59, Chapter 16, RCM 1947 is to negotiate in good faith on wages, hours, fringe benefits and other conditions of employment. Those four subjects of bargaining are the limits of the parties’ statutory responsibility. On other subjects the parties are under no obligation to bargain.” ULP #19-78

See also ULPs #17-78, #20-78, #30-79, #47-79, #7-80, #33-81, and #37-81.

- 42.2: Permissive Subjects [See also 53.11, 55.92, 72.54, 72.589, 73.45, and 73.477.]**
“Permissive subjects are those which deal with matters other than wages, hours, and working conditions, and, over which neither party is required to bargain.” ULP #43-79
- 42.21: Permissive Subjects - Case Law**
“[F]urther division between mandatory and permissive subjects of bargaining may be useful, viz., those things which are ordinarily in the purview of only one party, i.e., internal union affairs or management’s right to hire or fire are those things which are permissive subjects of bargaining.” ULP #5-77
“A recognition clause is not a condition of employment; therefore, I must conclude that our statute does not require bargaining on the subject.” ULP #19-78. See also UC #1-81.
“The proposal on the recognition clause submitted by the Employer is not a mandatory subject of bargaining under 39-31-305 MCA.” ULP #45-81
See also ULP #20-75.
- 42.22: Permissive Subjects - Statutory**
“The prime question was whether the state had a continuing obligation to bargain under the order issued on January 17, 1979, by the Board after the legislature removed the requirement from the act that ‘the state negotiate anything relevant to the determination of reasonable classifications and grade level....’ It seems clear that when the legislature repealed that part of the act it automatically changed it from a mandatory subject of bargaining to a permissive subject.” ULP #47-79
See also ULPS #13-76 and #5-77.
- 42.3: Prohibited Subjects [See also 53.11, 55.92, 72.54, 72.589, 73.45, and 73.477.]**
“Illegal subjects are those which would require an unlawful act or an act inconsistent with the basic public policy of the Act.” ULP #43-79
- 42.31: Prohibited Subjects - Case Law**
See ULP #5-77.
- 42.32: Prohibited Subjects - Statutory**
See ULPS #5-77 and #31-79.
- 42.42: Determination of Subject Status - Balancing Employee and Employer Rights**
“The Kansas Supreme Court in *NEA vs. Shawnee Mission Board of Education* (1973) 512 P.2d 426, 84 LRRM 2223 set forth the following balance between the scope of bargaining and management rights: ‘... The key ... is how direct the impact of an issue is on the well-being of the teachers, as opposed to its effect on the operation of the school system as a whole...’” The Pennsylvania Supreme Court “in *Pennsylvania Labor Relations Board vs. State College Area School District* (1974-75) 337 A.2d 262, 90 LRRM 2081 ... used the Kansas Supreme Court test to strike a balance between Section 701 [Scope of Bargaining] and 702 [Managerial Policy].... The Pennsylvania Supreme Court stated: ‘... where an item of dispute is a matter of fundamental concern to the employees’ interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under Section 701 simply because it may touch upon basic policy...’” ULP #20-78
“‘[W]here the effect of the employer’s action upon section 7 rights is significant, motive is irrelevant. In that type of case the establishing of a legitimate business justification is of no avail. Where the effect is minor, however,

the action will be deemed to be justified when significant and legitimate interests of the employer are shown.” ULP #29-84

See also ULPs #13-76, #5-77, #6-77, #30-79, #31-79, #43-79, #7-80, #34-80, and #9-84 and DR #1-80.

42.44: Determination of Subjects Status - Conflict with Laws [See also 46.2.]

See ULP #5-77.

42.45: Determination of Subject Status - Custom and Practice [See also 72.612.]

An individual teacher contract may not be substituted for a master agreement. The function of an individual contract is to state the teacher’s intention to teach for the academic year. ULP #17-75

See also ULPs #31-79 and #43-79.

43. SUBJECTS OF BARGAINING

43.11: Compensation - Wages and Salaries

“Salaries are a mandatory subject of bargaining and are therefore a legally negotiable item.” ULP #7-80

See also ULPs #14-74 and #34-80.

43.113: Compensation - Wages and Salaries

See ULP #37-81 Montana Supreme Court (1985).

43.120: Compensation - Wages and Salaries - Salary Schedule

“The School District’s argument that initial placement on a negotiated salary schedule is within its hiring prerogative and is not a negotiable item holds little merit.” ULP #7-80

“Placement on a salary matrix can only be considered a ‘wage’ matter and would have the utmost of direct impact on an individual.... [T]he District’s five-year maximum experience policy is a mandatory subject of bargaining.” ULP #34-80

43.123: Compensation - Wages and Salaries - Termination and Severance

See ULP #18-78.

43.131: Benefits - Health Insurance

The city must pay the same amount for policemen’s insurance as is paid for other city employees even though a different carrier is involved.” ULP #11-75

43.14: Compensation - Employee Services

Because it is not mandatory that teachers live in this housing, “we do not find housing and utilities to be related to the individual well-being of the teacher.... There is nothing that makes the subject an illegal subject of bargaining. Therefore we find it to be a permissive subject of bargaining.” ULP #13-76

43.142: Compensation - Employee Services - Cafeteria Services

See ULP #17-77.

43.16: Compensation - Leave

Emergency situations “is clearly a matter which must be bargained.” ULP #5-77

43.168: Compensation - Leave - Sick

See *Riphey v. Flathead Valley Community College* (1984).

43.211: Hiring and Dismissal - Recruitment - Hiring Practices

“Procedures for advertising job vacancies are a mandatory subject of bargaining.” ULP #5-77

43.212: Hiring and Dismissal - Recruitment - Residency Requirement

“[R]esidence is a mandatory subject of bargaining.” ULPs #5-77 and #6-77.

43.23: Hiring and Dismissal - Dismissal [See also 43.99.]

Tenured and non-tenured dismissal are mandatory subjects of bargaining. ULP #5-77

“It is clear that nonrenewal of non-tenured teachers was not covered by the agreement or allowed by the law then in effect. [75-6105.1, RCM 1947] (See Sections 59-1601 through 59-1617, RCM 1947, for the law presently covering collective bargaining for teachers and public employees in general.)” *Wibaux Education Association v. Wibaux High School* (1978)

“The per se nonrenewal of a nontenured teachers’ contract” does not constitute a ‘grievance’ and thus is not subject to the binding decision of an arbitrator.” *Wibaux Education Association v. Wibaux High School* (1978)

“[T]he Defendant did not show a specific statutory provision that would prohibit it from agreeing to the arbitration provision relating to the nonrenewal of nontenured teachers. In using the reasoning of the *Danville* case, I find the Defendant is not without authority to negotiate and agree to such an arbitration provision. In fact, since ‘dismissal’ or ‘nonrenewal’ are considered a mandatory subject of bargaining under the topic of ‘conditions of employment,’ the Defendant had specific authority to negotiate such an arbitration clause....” ULP #30-79

“Discharge has long been recognized as a mandatory subject of bargaining by the NLRB.... [T]he [Montana] Legislature could hardly have been ignorant in 1973 of the fact that the private sector had been bargaining over termination for cause (tenure) for years, and that the industries with strong and stable labor relations histories do not summarily dismiss bargaining unit members.” ULP #31-79

“None of the arguments made by Defendant deals with Montana public employees’ rights to bargain for tenure under the Act. The issue has not been decided by the Montana Supreme Court before....” ULP #31-79

“It is not illegal for the Superintendent to agree to dismiss employees only for cause and, if there is a dispute as to what good cause is, to go to an arbitrator for a final and binding decision.” ULP #31-79

“There was no showing of ‘just cause’ for removing Nye from her permanent status in the permit clerk position.” *Nye v. Department of Livestock* (1982)

“It is well settled that terminations and grievance procedures are negotiable subjects.” ULP #18-83

See also *Welsh v. Great Falls* (1984), *Great Falls and Raynes v. Johnson* (1985), and *In the Matter of Raynes* (1985).

43.232: Hiring and Dismissal - Evaluation

See ULP #43-79.

43.233: Hiring and Dismissal - Dismissal - Termination Procedure

“Applying the test of how direct the impact of an issue is on the well-being of an individual teacher, as opposed to its effect on the operation of the school system as a whole, the conclusion is inescapable that the effect of these proposals [involving the procedures to be followed by the School District before a teacher is terminated] on the individual teacher will be substantially greater than that on the school system. What the teacher is told and when he/she is told may have a direct effect on his future employment.” ULP #5-77

“The Hearing Examiner made no judgment on whether contract proposals in Article VIII [Employment Status of Teachers] are meritorious. She ruled only that the general subjects are mandatory subjects of bargaining.” Those subjects are: considerations prior to termination; notice of termination (tenured and nontenured); dismissal (tenured and nontenured); notification of reelection; and individual contract. “A number of subsections in Article VIII are matters of statute. Teachers do not have to negotiate the provisions of Montana Law, these provisions are theirs by right.” ULP #5-77 [Hearing Examiner’s comments relating to the School Board’s exceptions]

“The University has agreed that reinstatement is a mandatory subject of negotiations.” ULP #7-78

“In this matter the Defendant has retained the ‘sole discretion’ to employ or dismiss teachers. The arbitration provision provides a review process to ensure that teacher dismissals are not arbitrary or capricious.” ULP #30-79

“The intent of the Parties to the collective bargaining agreement surely must be to allow a nontenured teacher to submit the matter of nonrenewal to arbitration.... The collective bargaining agreement language is an extension of the procedure outlined in the statute.... In *Milberry vs. Board of Education*, 354 A.2d 559, 92 LRRM 2455 (1976), the Supreme Court of Pennsylvania addressed such a situation ... [and] concluded, ‘all the parties have done is to afford the teacher a further procedural protection’.” ULP #30-79

The public employer is “required to negotiate the subject of termination for cause with the union.” ULPs #31-79 and #43-79

“[T]he tort of wrongful discharge may apply to an at will employment situation. In fact, the theory of wrongful discharge has developed in response to the harshness of the application of the at will doctrine, under which an employment may be terminated without cause.” *Nye v. Department of Livestock* (1982)

“Administrative rules may be the sources of a public policy which would support a claim of wrongful discharge.... We find that the Department of Livestock failed to apply its own regulations to Margaret Nye, and thereby violated public policy.” *Nye v. Department of Livestock* (1982)

The statute requiring a hearing for suspensions or terminations of employees was applicable only in situations where violations of rules or the neglect of duty were involved. However, a fire fighter who was terminated for physical disability had a property interest in his position after the probationary period had been satisfied. Therefore he had to have an opportunity to be heard by an impartial tribunal before he could be terminated. Without such a hearing, the employer’s decision to terminate him was void. Consequently the fire fighter was entitled to full pay and benefits from the date of his termination until the final disposition of his case. *Welsh v. Great Falls* (1984)

See also *Savage Education Association v. Richland County School Districts* (1984), *Bridger Education Association v. Carbon County School District No. 2* (1984), *Great Falls and Raynes v. Johnson* (1985), *In the Matter of Raynes* (1985), and ULP #28-76 Montana Supreme Court (1979).

43.31: Promotion, Demotion and Transfer - Promotion

Promotion is a mandatory subject for bargaining. ULP #5-77

43.311: Promotion, Demotion and Transfer - Promotion Procedures

See ULP #17-78.

43.312: Promotion, Demotion and Transfer - Promotion Standards

“Section 59-907 RCM 1947 makes anything relevant to the determination of classifications negotiable. That amendment ... imposes an obligation on the state to bargain on classification....” ULP #17-78

“[T]he conflict between the Defendant’s mandate to review and adjust classifications and the management prerogative on job classifications set forth in Section 59-1603(2) ... must be resolved in favor of the obligation to bargain collectively on classification matters.” ULP #17-78

43.3121: Promotion, Demotion and Transfer - Promotion Standards - Seniority

Seniority is a mandatory subject for bargaining. ULP #5-77

43.35: Promotion, Demotion and Transfer - Transfer

Transfer procedures are mandatory subjects of bargaining. The transfer decisions themselves are management rights. ULP #5-77

43.352: Promotion, Demotion and Transfer - Transfer - Involuntary Transfer

Section 1603(2) RCM 1947 was cited as the basis for the school board having the right to “... transfer and assign ... employees.” ULP #16-75

43.41: Job Content and Scheduling - Job Description

“The ‘definition of bargaining unit work’ is now clearly recognized by the National Labor Relations Board as a mandatory subject for collective bargaining.” ULP #13-74

43.42: Job Content and Scheduling - Assignment

“The right to assign is a management right and inability to make assignments could cause great harm to the school district. However, the effect of a mis-assignment of a teacher may have significant adverse effects on the individual teacher....” In other words, “assignment of teachers is a permissive subject of bargaining while the effect of those assignments is mandatory.” ULP #5-77

43.422: Job Content and Scheduling - Assignment - Change

The transfer and assignment of teachers in the School District has been a matter of district policy and not of contractual agreement. Therefore, unilateral change is justified if it is not based on discrimination for union activities. ULP #16-75

“[R]eassignment, without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws.” *Sorlie v. School District* (1983)

43.44: Job Content and Scheduling - Hours

“[T]he time school begins is a permissible subject of bargaining.” ULP #13-76

“With the amount of time required for lunch duty and preparation being a *balance* against a yearly salary, I can only see these items as having a direct impact on the well-being of the individual teachers. Therefore ... [they] are negotiable items.” ULP #20-78

43.51: Job Security - Tenure

See ULP #31-79.

43.53: Job Security - Reduction in Force or Layoff

See ULPs #5-77 and #30-80.

43.531: Job Security - Reduction in Force or Layoff - Procedure

"[L]ack of procedure for lay-offs would have a substantially greater impact on the well-being of the individual teacher than on the operation of the school district as a whole. That is, in a district with a declining enrollment and no reduction-in-force policy, more individual teachers would be likely to suffer anxiety about an impending lay-off than in a district with a predictable policy. A procedure for lay-offs and re-hires is a mandatory subject of bargaining." ULP #5-77

See also ULP #7-78.

43.54: Subcontracting

Public employers have the responsibility to bargain on work to be subcontracted out if it affects any member of a collective bargaining unit. Subcontracting cannot be used as an anti-union weapon. To use the possibility of subcontracting as a weapon to delay negotiations is not good-faith bargaining. ULPs #4-76 and #3-75

"The NLRB has ... dealt with the issue of subcontracting ... on an 8(a)(5) charge, failure to bargain in good faith, which is similar to our section 59-1605(3).... The NLRB states that bargaining on subcontracting is not required where: (A) ... [it is] motivated solely by economic reasons; (B) it has been customary for the company to subcontract various kinds of work; (C) no substantial variance is shown in kind or degree from the established past practice of the employer; (D) no significant detriment results to employees in the unit; and (E) the union has had an opportunity to bargain about changes in existing subcontracting practices at general negotiating meetings." ULP #18-78

ULP #18-82 did *not* address various questions related to the School District's right to subcontract.

Following National Labor Relations Board case precedents, "a conclusion that subcontracting of collective bargaining unit work is a mandatory subject of bargaining under the National Labor Relations Act is in order. Because of the similarity between the Montana Collective Bargaining for Public Employees Act and the National Labor Relations Act and because of the Board of Personnel Appeals' action in ULP #3-75, ULP #18-78, and ULP #30-80, a conclusion that subcontracting of collective bargaining unit work is a mandatory subject of bargaining under the Montana Collective Bargaining for Public Employees Act is in order." ULP #9-83

In *Fibreboard v. NLRB* (1964), "the National Labor Relations Board states that bargaining on subcontracting is not required where: (A) the subcontracting is motivated solely by economic reasons; (B) it has been customary for the company to subcontract various kinds of work; (C) no substantial variance is shown in kind or degree from the established past practice of the employer; (D) the union has had an opportunity to bargain about changes in existing subcontracting practices at general negotiating meetings." ULP #9-83

See also ULP #30-80.

43.541: Job Security - Subcontracting - Procedure

"Reading both sections [in the collective bargaining agreement] together, we find that Management Rights include the right to contract or subcontract

work that directly impacts the Union or its members provided *first*, that management does an evaluation of the total economics involved in that operation as it relates to the public good and provided *second*, that management's purpose or intent (motivation) of subcontracting is not to undermine the Union or to discriminate against its members." ULP #9-83

See also ULP #3-75.

43.61: Special Subjects - Education

See ULP #5-77.

43.616: Special Subjects - Education - Inservice Days

See ULP #5-77.

43.619: Special Subjects - Education - Non-Teaching Duties

See ULP #20-78.

43.621: Special Subjects - Planning Period

See ULP #20-78.

43.622: Special Subjects - Education - School Calendar

"Changes in school calendar ... is a mandatory subject of bargaining.... [It] ultimately deals with hours of employment which are specified in the Act as a subject upon which the employer must bargain." ULP #5-77

43.623: Special Subjects - Education - School Discipline

The proposal to "set up a school Discipline Review Committee ... is a permissive ... subject of bargaining.... This determination is confined to this specific proposal; there may be other proposals which would be considered mandatory and not permissive." ULP #5-77

43.624: Special Subjects - Education - Teacher Evaluations

"[E]valuation procedures are mandatory subjects of bargaining under our collective bargaining statute." ULP #43-79

See also ULPs #16-75 and #13-76.

43.64: Special Subjects - Police and Fire

See *Billings Fire Fighters Local 521 v. Billings* (1985).

43.7: General Agreement Provisions

A collective bargaining agreement is not a condition precedent to the issuance of individual teacher contracts. *Billings Education Association v. District Court* (1974)

"The Department should either comply with the recognition provision of its contract or submit the dispute to arbitration, as provided in Article XIII of its contract." DC #5-75 District Court (1979)

"[I]ndividual contracts is ... a provision which does not need to be bargained. Individual contracts must conform to the master agreement signed with the exclusive representative.... The effect of the time contracts are issued may have great impact on the individual teacher; it will have little impact on the school district which has to, in any event, issue individual contracts." ULP #5-77

"Sensible negotiators will automatically include a savings clause [to protect the body of the Agreement if an individual section should prove to be illegal] in a contract.... [It] should not have to be bargained. ULP #5-77

An agreement duplication and distribution provision is a mandatory subject for bargaining. ULP #5-77

"A properly drawn nondiscrimination clause can be considered a mandatory subject of bargaining." According to the Montana Human Rights Act, "workers are protected against discrimination for race, creed, age, and sex." ULP #5-77

Bargaining related to a recognition clause was addressed in ULP #19-78.

"[I]f the same Union receives a majority of the votes in Units 1 and 3 then the question of the merger of Units 1 and 3 into the same unit may properly be raised by the Employer as a subject of collective bargaining." UD #1-79

Bargaining related to a work preservation clause was addressed in ULP #29-79.

43.72: General Agreement Provisions - Grandfather Clause

See ULP #2-73.

43.73: General Agreement Provisions - Grievances - Arbitration [See also 47.5.]

"Had either party contended in their complaint that the other had a duty pursuant to the agreement to submit the issue of wages, after the period of the wage re-opener, to compulsory and binding arbitration, the Hearing Examiner would have concurred. However, neither party has expressed their complaint in these terms and both parties expressly agree that the contract does not require binding and compulsory arbitration with regard to the issue of the wage re-opener and wages after the period of the wage re-opener." ULP #14-74

"It is well settled that terminations and grievance procedures are negotiable subjects." ULP #18-83

43.74: General Agreement Provisions - No-Strike Clause

"The crucial question involved ... is whether or not the no-strike provision of the contract is enforceable against the Union with regard to the issue of wages after the period of the wage re-opener, since it is the complete agreement of the parties that the duty of compulsory arbitration does not apply to wages after the period of the wage re-opener.... I hold that the no-strike clause in the union contract does not apply to the matter of the wage re-opener." ULP #14-74

43.8: Union Security [See also 24.22.]

"It is elementary that a union security clause is a mandatory subject of bargaining." ULP #16-83

The "Montana Collective Bargaining for Public Employees Act specifically authorizes union security clauses This statute clearly demonstrates that in Montana, such 'union security' clauses or devices are, as a matter of law, enforceable conditions of employment." ULP #16-83 District Court (1985)

"The Department should either comply with the recognition provision of its contract or submit the dispute to arbitration, as provided in Article XIII of its contract." DC #5-75 District Court (1979)

A "recognition clause" is a permissible subject of collective bargaining. ULP #20-75. See also ULP #45-81.

"A recognition clause is not a condition of employment; therefore, I must conclude that our statute does not require bargaining on the subject." ULP #19-78. See also UC #1-81.

43.84: Union Security - Dues Check Off [See also 24.131 and 24.14.]

"Section 39-31-201 MCA is mandatory and therefore obligates the public employer to deduct union dues from an employee's pay.... Unlike wages,

hours and other conditions of employment upon which both parties are required to bargain in good faith, but about which neither is required to make a concession, dues deduction is mandated by statute and cannot be altered by the parties unless both agree.” ULP #29-84

43.9: Rights of Management [See also 43.79, 72.33, 72.35, 72.58, and 72.665.]

“[T]he existence of a management rights section in the statute must be held to have some meaning. That section coupled with the balancing tests used by the courts in other jurisdictions compel the conclusion that the proposal, as written [‘Before making any changes in the program, management shall consult with program managers’], is not a mandatory subject of collective bargaining.” DR #1-80

43.94: Rights of Management - Standards of Performance

A maintenance of standards provision is ultimately related to working conditions and therefore is a mandatory subject of bargaining. ULP #5-77

“Had the School Board established an attendance policy applying to every member under the union contract, then the unilateral initiation of a more dependable method to enforce this attendance policy would have been merely a change from the established rule.... [It] would have been a managerial prerogative.” Butte Teachers’ Union v. Silver Bow School District (1977)

43.95: Rights of Management - Elimination of Services

“[R]eassignment, without reduction in salary, for legitimate financial constraints is justifiable and not contrary to tenure laws.... [I]f a position similar to that previously held by the reassigned educator is available after program reduction or changes it *must* be offered to that person.” Sorlie v. School District (1983)

43.98: Rights of Management - Selection and Direction of Personnel

An employer is not obligated to assign work to a given individual if it was not intended for him by the contract. ULP #3-75

“During the negotiations on [the issues of wages and insurance] the Association attempted to insert a clause on duty hours and schedules. The Board refused to negotiate on this clause maintaining that it was not open to negotiation. I would agree with the Board on this point.” ULP #14-76

“[R]eassignment, without reduction in salary, for legitimate financial constraints is justifiable and not contrary to tenure laws.” Sorlie v. School District (1983)

43.99: Rights of Management - Discipline and Discharge [See also 43.23.]

“Did the negotiated collective bargaining agreement change any of the rights, duties or powers delegated to the School District?” The Hearing Examiner found that “the Defendant has retained the ‘sole discretion’ to employ or dismiss teachers. The arbitration provision provides a review process to ensure that teacher dismissals are not arbitrary or capricious.” ULP #30-79

“Discharge has long been recognized as a mandatory subject of bargaining by the NLRB....” ULP #31-79

“[D]iscipline is a mandatory subject of bargaining.” ULP #16-81

46. AGREEMENT

46.12: Type of Agreement - Supplemental Agreement

An employer must take part in the “contractual mechanism” for the ongoing process of collective bargaining. This may include negotiations of supplemental agreements. ULP #1-75

46.15: Type of Agreement - Successor Agreement [See also 11.16, 41.8, and 41.9.]

“Regardless of the legality of an oral agreement modifying a collective bargaining agreement in 1967, such an agreement became illegal when the Public Employees Bargaining Act was passed in 1973.... [In addition,] the contracts under which Stuart McCarvel worked (1975-77 and 1977-79) preclude any continuation of an oral agreement regardless of its legality.” ULP #24-77

46.21: Provisions Inconsistent with Statute - Conflict with Existing Legislation

“Section 18.6, a nondiscrimination clause, ... may violate Section 51-519, RCM 1947, which specifically prohibits school trustees from appointing relatives to any position of trust or involvement.” ULP #5-77

46.22: Provisions Inconsistent with Statute - Conflict with Subsequent Legislation

“All firemen who commenced employment as Great Falls Firemen or served in such a capacity during the effective period of the ordinance have a vested contractual right [to the benefits of the ordinance concerning longevity pay].” Therefore, a subsequent resolution repealing the ordinance was unconstitutional as applied to firefighters covered by the contract in effect between the city and labor organization representing the firefighters at the time of the repeal. IAFF Local 8 v. Great Falls (1977)

“The distinguishing factors in this case, as compared to those in IAFF Local 8 v. Great Falls (1977) are: (1) The Highway Patrol officers received their increments each year, and these increments were incorporated into the 1975 state pay plan, (2) no other contract, by union or otherwise, with the Highway Patrol officers is violated, and (3) the object of the original one percent statute was not a contractual inducement to become effective after 20 years of service. Therefore the repeal of the statute in this case providing for yearly increments to Highway Patrol officers did not trample any legal or equitable principles.... [There was] no impairment of a vested contractual right.” Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984)

46.31: Validity - Suit to Compel Enforcement

“The issue before this court is enforcement of a collective bargaining contract, not any decision of the Intervenor, Board of Personnel Appeals. Neither principles of res judicata nor of collateral estoppel are applicable.” DC #5-75 District Court (1979)

See also Butte Teachers' Union v. Butte School District (1982).

46.42: Terms - Duration

See ULP #7-78.

46.44: Terms - Expiration

See ULP #18-78.

46.61: Agreement Administration - Interpretation

A grievance procedure is one appropriate avenue for gaining interpretation of a contract and/or bargaining a supplemental agreement if needed. Failure to process such a grievance is an unfair labor practice. ULP #1-75

“[T]he basic question here is one of contract language versus contract administration.... [The Hearing Examiner] does not think that the School District committed an unfair labor practice in negotiating the language of provision 4.04 ... or that the provision as it is written ... is violative of an employee's right to decide whether or not to pay monies to a labor organization as a condition of employment.” ULP #44-79

“[T]he School District’s improper administration of provision 4.04 did not result in any advantage to the Association that proper administration of the provision could not have.... The Association was entitled to receive the representation service fees called for, either from the employees employed at the time or their replacements should they have been terminated for their failure/refusal to pay the fees as a condition of employment.” Therefore, the Hearing Examiner found the charge to be without merit. ULP #44-79

46.641: Agreement Administration - Continuing Duty to Bargain During Contract Term - Concerning Contractual Terms

An employer must take part in the “contractual mechanism” for the ongoing process of collective bargaining. This may include negotiations of supplemental agreements. ULP #1-75

“The grievance procedure was to determine whether or not a prior contractual obligation on the part of the university, that is, an obligation which existed prior to the election of the bargaining agent, had been violated. On that very narrow fact situation, I cannot find that the university failed to meet its duty to bargain.” In other words, since “the grievance procedure ... was established prior to University Teachers Union’s election, and therefore prior to any duty to bargain.” ULP #7-78

47. GRIEVANCES - GRIEVANCE ARBITRATION

47.11: Formal Grievance Procedure - Steps and Time Limits

The only party who can initiate or withdraw a grievance is the aggrieved party. ULP #1-75

A grievance concerning salary is a continuing grievance, and each day constitutes in essence a new grievance. Therefore, time limit set for filing a grievance after the event occurs is not applicable. ULP #3-76

“The grievance was not a one-time affair that began and ended with McCarvel’s request for assistance some seventeen months before he filed his charge. It was a continuing grievance that recurred every day that the Union refused to act. The continuing nature of such a violation has been recognized in federal National Labor Relations Act decisions ... by which we are guided....” ULP #24-77 District Court (1985)

“In *Young v. City of Great Falls* ... (1982) the court held the Board may find a continuing violation after the filing of an unfair labor practice charge. Similarly in this case, McCarvel’s complaint could have been amended to include the Union’s continued failure to process the grievance after it was filed.” ULP #24-77 District Court (1985)

“The key question in this case then is whether a final binding decision was made within the procedure of the collective bargaining agreement.... [T]his case, in which the grievance committee deadlocked, is clearly distinguishable from the cases of *Freeman* and *Sear* in which a final decision by the arbitrator or grievance committee relieved the union of further responsibility.” ULP #24-77 District Court (1985)

“The Union’s request that the Hearing Examiner resolve the grievance ... in favor of the grievant because the specified time limits have been violated ... [is] more appropriately addressed by the arbitrator deciding the merits of the grievance itself.” ULP #5-80

47.15: Formal Grievance Procedure - Exhaustion of Remedies

An unfair labor practice charge was dismissed without prejudice because the Board of Personnel Appeals declines to assume jurisdiction until all remedies available to the grievant have been exhausted. ULP #18-76

47.17: Formal Grievance Procedure - Refusal to Comply with Settlement [See also 72.71.]

See ULP #39-80.

47.18: Formal Grievance Procedure - Mandatory Submission to Arbitration

Submission of issues to arbitration (Section 39-31-310) is permissive, not mandatory. ULP #3-79 Montana Supreme Court (1982)

See also ULP #7-80.

47.21: Refusal to Process or Answer - By Union [See also 23.2 and 73.51.]

The Collective Bargaining for Public Employees Act provides no remedy for a union allegedly breaching a duty it owed to a member "by its failure to fairly represent a grievance. Section 39-31-402, MCA does not encompass this situation." The Supreme Court held that the District Court (as opposed to the federal court) had jurisdiction. *Ford v. University of Montana* (1979)

Montana Supreme Court Justices "still recognize the holding in *Ford* that a District Court has original jurisdiction to hear claims that a union has breached its duty of fair representation. [They] no longer recognize, however, the dicta in *Ford* which states that a breach of the duty of fair representation is not an unfair labor practice within the meaning of Section 39-31-401, MCA. Further, [they] no longer recognize other dicta in *Ford* which states that finding jurisdiction in the Board of Personnel Appeals on these matters would necessarily deprive the District Court of jurisdiction.... [They] therefore [held] that the Board of Personnel Appeals has jurisdiction to hear claims that a union has breached its duty of fair representation." ULP #24-77 Montana Supreme Court (1981)

"Though it is recognized the union does not have to take every grievance to arbitration, it clearly cannot arbitrarily refuse to process, or process in a perfunctory manner, a reasonable and meritorious grievance." ULP #24-77 District Court (1985)

47.222: Refusal to Process or Answer - By Employer - Other Procedural Defects as Basis [See also 47.83, 47.87, 72.71, and 72.76.]

See ULPS #19-79 and #5-80.

47.223: Refusal to Process or Answer - By Employer - Subject Matter as Basis

The employer's feeling that no provision of the contract is being addressed in the grievance does not make the dispute nonexistent. Such reasoning is not acceptable grounds for refusing to participate in the grievance process. ULP #1-75

"The Department of Highways has breached its contract covering Plaintiff's members by refusing to abide by the recognition provision and refusing to submit the resulting grievance to arbitration." DC #5-75 District Court (1979)

"Management rights" as the subject matter of a grievance arbitration does *not* constitute grounds for the employer to refuse to participate in arbitration as specified in the contract. ULP #3-76

"Had the School Board established an attendance policy applying to every member under the union contract then the unilateral initiation of a more dependable method to enforce this attendance policy would have been merely a change from the established rule.... [It] would have been a managerial prerogative.... The facts of this case do not lead to that conclusion. The School Board initiated additional rules, substantially changing old rules on the same subject." Therefore, the change was subject to mandatory and binding arbitration. *Butte Teachers' Union v. Silver Bow School District* (1977)

In ULPs #1-75 and #3-76, "this Board held that when an employer agrees to a grievance procedure, culminating in final and binding arbitration, its refusal to submit a grievance to arbitration is a refusal to bargain in good faith. That position was modified so that this Board would look to the collective bargaining contract to see if the parties agreed to process the grievance in dispute, and in cases of doubt the grievance will be ordered processed." ULP #7-80

See also ULP #30-79 and Montana Supreme Court (1982).

47.311: Individual Rights - Right to Representation - In Investigatory or Disciplinary Interview [See also 72.335.]

"In 1975, the United States Supreme Court agreed with the National Labor Relations Board and reversed the fifth circuit court establishing what has come to be known as the Weingarten rule. [NLRB v. Weingarten, 420 U.S. 251 (1975), 88 LRRM 2689; see also ILGWU v. Quality Mfg. Co. decided the same day, 88 LRRM 2698.] The Court agreed with the National Labor Relations Board that employee insistence upon union representation at an employer's investigatory interview, which the employee reasonably believes might result in disciplinary action against him, is protected concerted activity." ULP #16-81

The "Board of Personnel Appeals first used the principle of Weingarten in ... ULP #16-81.... [T]he test is: (1) The employee who is being disciplinary interviewed has to ask for union representation. A union representative cannot ask for an employee. (2) The employee or the employee requested union representative may then ask for a pre-interview conference with the employer to determine the nature of the interview. (3) The employee and the union representative then are entitled to a private conference before the interview. (4) At both the pre-interview conference and the interview the union representative is free to speak." ULP #5-84

See also ULPs #37-76, #41-76, and #42-79.

47.32: Individual Rights - Recourse to Outside Forums and Remedies

"The Employer alleges that Section 7-32-4164 MCA is the Union's exclusive remedy. The Board cannot agree with the Employer's assertion of exclusivity because it would limit the rights of public employees under the Collective Bargaining for Public Employees Act.... The two remedies--final and binding arbitration and Section 7-32-4164 MCA--may not be exclusive remedies." ULP #18-83

"Only in cases where it is certain that the arbitration clause contained in a collective bargaining agreement is not susceptible to an interpretation that covers the dispute is an employee entitled to sidestep provisions of the collective bargaining agreement." Small v. McRae (1982)

"We do not read the Freeman case to mean an individual employee loses his grievance rights under a collective bargaining agreement when the agreement also permits his independent action." ULP #24-77 District Court (1985)

47.521: Grievance Arbitration - Arbitrability - Scope of Arbitration

"An arbitrator, therefore, merely has to determine whether or not the procedure agreed to by the parties was properly used in the termination of the non-tenured teacher. The basis of the dismissal is not a subject of review by the arbitrator." ULP #30-79

"[A] grievance based upon the misapplication or misinterpretation of a negotiated item" (wages in this case) is arbitrable. ULP #7-80

See also ULP #19-79.

47.522: Grievance Arbitration - Arbitrability - Procedural Issues

See ULP #5-80.

47.54: Grievance Arbitration - Deferral to Arbitration by Board of Personnel Appeals [See also 71.8, 71.81, and 71.82.]

The Board of Personnel Appeals and its agents assumed that they did not have the power to defer matters to arbitration in ULP #5-75. However, the Board realized it had such authority under the provisions of Section 59-1607, RCM 1947 and so stated in ULP #13-78 and other ULP decisions.

Complaints *were* remanded to grievance arbitration procedures in ULP #13-78.

Complaints *were not* remanded to grievance arbitration procedures because the procedures did not culminate in final and binding arbitration in ULPs #3-79, #34-80, #18-81, and #19-81.

The Hearing Examiner did not defer the case to the contract grievance procedure for the following reasons. "The grievance procedure provided in the contract does not culminate in a final and binding decision.... This charge also involves an alleged violation of complainant's basic rights under 39-31-401(1) MCA.... The City's conduct with respect to abiding by the settlement reached on the grievance filed by Mr. Young does not lead one to conclude that a stable collective bargaining relationship exists between the parties. There was no indication of a willingness on the part of the City to arbitrate." ULP #3-79

"The Board deferred ruling on the issue of whether or not it has jurisdiction to defer a pending unfair labor practice charge to arbitration. The Board reserved ruling on this issue for another case." ULP #29-79

It was inappropriate to defer the matter before the Hearing Examiner because "the complaint alleges that the District did interfere with the operation of the contract's grievance procedure by refusing to strike names on an arbitration list." ULP #5-80

"[T]he fact that both parties filed unfair labor practice charges and moved to have them consolidated for hearing and decision coupled with the nature of the charges reinforces those reasons [to decline deferral for reasons according to the Collyer Doctrine]." ULP #19-80

"There is nothing on the record to suggest that the arbitration award made in this case did not meet all the prerequisites of the Spielberg doctrine.... [The Board of Personnel Appeals will] defer to the award and require that Complainant seek enforcement in the courts." ULP #39-80

"[T]he matter was not deferred under the Collyer Doctrine because the charge was brought by the Employer, who had no recourse to the contract's grievance procedure, and because the parties' contract did not provide for binding arbitration...." ULP #18-81

"The Board clearly has the authority to hear this complaint under the provisions of 39-31-403, MCA. However, it is determined that the policies and provisions of the Act would best be effectuated if this Board were to remand this complaint to the grievance-arbitration procedure specified by the collective bargaining agreement of the parties." ULP #43-81

See also ULPs #27-82 and #3-83 and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

47.55: Grievance Arbitration - Deferral to Arbitration by Courts [See also 71.83.]

"Only in cases where it is certain that the arbitration clause contained in a collective bargaining agreement is not susceptible to an interpretation that covers the dispute is an employee entitled to sidestep provisions of the collective bargaining agreement." *Small v. McRae* (1982)

47.56: Grievance Arbitration - Public Policy

“Section 17-807, RCM 1947 does not prohibit the enforcement of an agreement to arbitrate grievances in a contract between a public employer and a labor organization representing the public employees of an employer.” DC #5-75 District Court (1979)

“Defendant Department [of Highways] is hereby ordered to recognize Plaintiff, Joint Council of Teamsters, as the representative of its maintenance employees in Glacier and Toole Counties, upon presentation of evidence a majority of such employees in each county are members of Plaintiff organization; or, in the alternative Defendant Department is ordered to submit the dispute relating to recognition of Plaintiff, Joint Council of Teamsters, as representative of its maintenance employees in Glacier and Toole Counties, to final and binding arbitration as provided in Article XIII of the collective bargaining agreement, Joint Exhibit A.” DC #5-75 District Court (1979)

47.61: Arbitrator - Selection and Appointment

“[T]he District was in breach of contract when it refused to strike names from the arbitration list.” ULP #5-80

See also ULP #5-80 District Court (1981).

47.83: Grievance Arbitration Awards - Refusal to Comply [See also 47.22, 47.87, 72.71, 72.76, and 73.51.]

“Any questions relating to possible non-compliance with all steps of the grievance procedure may be submitted to an arbitrator.” DC #5-75 District Court (1979)

See also ULPs #2-74, #11-78, and #39-80 and *Savage Education Association v. Richland County School Districts* (1984).

47.86: Grievance Arbitration Awards - Review

See *Savage Education Association v. Richland County School Districts* (1984).

47.87: Grievance Arbitration Awards - Enforcement [See also 47.22, 47.83, 72.71, 72.76, and 73.51.]

Failure to implement an arbitration award does not constitute an unfair labor practice. Enforcement must be gained through suit in a court of law. ULP #2-74

An arbitrator reinstated terminated nontenured teachers with back pay after the school trustees failed to comply with contract termination procedures. The arbitrator's award was appropriate for the following reasons. (1) In *Savage Public Schools v. Savage Education Association* (1982), the Montana Supreme Court held that, whether or not the trustees had complied with the contract procedural requirements, the matter was subject to arbitration. Failure to submit the dispute to arbitration was an unfair labor practice, rendering the trustees' argument that they were not authorized to proceed to that step meritless. (2) The collective bargaining agreement's procedural guarantees and its grievance procedures (which culminated in arbitration) were conditions of employment. Therefore such procedures were proper bargaining subjects which mandated that the trustees be bound by their good faith contract representations. (3) The trustees advanced no legitimate grounds to vacate or modify the arbitrator's award. (4) The arbitrator's award was rational and appropriate, although no express contractual remedy was stated. *Savage Education Association v. Richland County School Districts* (1984)

See also ULP #39-80.

51. IMPASSE [See also 72.586, 72.663, 73.45, and 73.474.]

51.01: Definition

“Whether a bargaining impasse exists is a matter of judgment. Through case history a test for impasse has been developed: (1) the bargaining history, (2) the good faith of the parties in negotiations, (3) the length of the negotiations (frequent, numerous, exhausting--exploring all grounds for settlement), (4) the importance of the issue or issues as to which there is disagreement (mandatory subject of bargaining) and (5) the contemporaneous understanding of the parties as to the state of negotiations (positions solidified).” ULPs #25-76, #19-78, and #20-78

“The Montana Public Employees Collective Bargaining Act impasse procedures includes both mediation and fact finding. Therefore, another test [of whether or not impasse exists is]: ... Has mediation or fact finding been called? What have been the actions of the fact finder or the mediator?” ULP #25-76

“The school closure had the same effect as a lockout. The School Board surely did not meet the requirements for impasse.” ULP #25-76

“Generally, impasse is said to exist when there are irreconcilable differences in the parties’ positions after exhaustive good-faith negotiations.” ULP #19-78

“With the parties not fully exploring all grounds for settlement, with the School District acting in bad faith by imposing conditions on future negotiations, with the positions of the parties not fixed and with the mediator trying to continue mediation, I [the Hearing Examiner] do not believe impasse existed in late August.” ULP #20-78

The Hearing Examiner explored the meaning of disputed contract language related to the determination of impasse situations. ULP #18-81

52. MEDIATION AND CONCILIATION

52.33: Procedure - Confidentiality

“It is not uncommon for a mediator to request that the parties not discuss proposals, bargaining, etc., with the media during mediation. But, this is merely a request for a ‘gentlemen’s’ agreement not to do so. Surely, it is not a ‘gag order’ request which is enforceable.” ULP #25-76

53. FACTFINDING

53.24: Determination of Need - Refusal to Participate [See also 72.75 and 73.55.]

“The [Hearing] Examiner can find no evidence introduced by the State in defense of the conditions imposed by the Stipulation to limit the fact finder to solely economic issues as opposed to the collateral issues that were discussed in previous bargaining session.” However, the Hearing Examiner denied the Union’s complaint that the State’s bargaining agent failed to follow through on its agreement to enter into fact finding because there were material questions of fact which required hearing. ULP #11-79

53.75: Findings of Fact and Recommendations - Binding Effect

“[T]he Union negotiators declared a willingness to abide by any decision which the factfinder would render.... The factfinder issued a report which deemed certain items to be permissive. The Defendant herein subsequently voted to accept the factfinder’s report and a collective bargaining agreement, consistent with the factfinder’s report, was signed by both parties. The unilateral ‘change’ by the employer, even assuming the items are mandatory, was the employer’s stance that they were permissive.... While this Board is not bound by the decision of the factfinder regarding the labels of permissive or

mandatory attached to various items sought to be negotiated, the parties are bound to the factfinder's decision by their own choice." ULP #13-83

62. STRIKES

62.2: Right to Strike [See also 21.8 and 72.365.]

"[R]espondent had the right to strike specifically granted its members by the legislature" since "employees under Montana's Collective Bargaining for Public Employees Act ... are nowhere prohibited from striking." Department of Highways v. Public Employees Craft Council (1974)

62.21: Right to Strike - Protected Strikes

See ULP #14-74.

62.23: Right to Strike - Prohibited Strikes

"[T]he strike was illegal and ... the state acted within its rights. The change in vacation leave was not an unfair labor practice...." ULP #47-79

62.232: Right to Strike - Prohibited Strike - No-Strike Clause in Contract

Although a compulsory arbitration and a no-strike clause are included in the contract, the wage re-opener provision is excluded from arbitration, and so a strike is a legal action on the part of the union and is not an unfair labor practice. ULP #16-74

62.31: Types of Strikes - Economic

"An economic strike is one that is neither caused nor prolonged by an unfair labor practice on the part of the employer.... [T]he strike was an economic strike and was not a strike proximately caused by the alleged unfair labor practice'." ULP #11-79

See also ULPs #14-74 and #34-82.

62.36: Types of Strikes - Unfair Practice

"An unfair labor practice strike is an activity initiated in whole or in part in response to an unfair labor practice committed by the employer.... [T]he pivotal question is whether the unfair labor practice is a proximate cause of the strike.... [T]he Examiner cannot find substantial evidence in the record that the State's insistence on the stipulation [related to fact finding] triggered the strike." Therefore, "the strike was an economic strike and was not a strike proximately caused by the alleged unfair labor practice." ULP #11-79

62.41: Strike Conduct - Strike Authorization

Strike authorization votes are matters of internal union policy and are protected as a "concerted activity for the purpose of collective bargaining." (See RCM 1947, 59-1603.) The Unfair labor practice charge by the employer was dismissed. ULP #11-75

62.44: Strike Conduct - Strike Breakers

"The action of Defendant discriminated solely on the basis of union activity, those who crossed the picket lines and agreed to work were singled out for special treatment." ULP #34-82

62.521: Employer Action - Reactions to Strikes - Loss of Pay

"[W]here differentiations by employers have been made between strikers and non-strikers in the provision of bonuses or other special benefits, the Board and courts have viewed it with disfavor." ULP #34-82

"The hearing examiner's single conclusion of law stated that 'By its action in paying those twenty teachers who said they would work, seventeen of whom worked one day, and failing to pay the remaining teachers (Missoula

County High School District) violated §39-31-401(1) and (3) MCA'." However, the District Court ordered "that the Decision of the Board of Personnel Appeals is reversed, the Final Order of the Board is vacated, and the unfair labor practice charge against the Petitioner, Missoula County High School District is dismissed." ULP #34-82 District Court (1985)

See also ULP #13-78.

62.523: Employer Action - Reactions to Strikes - Terminations

Discharge of striking teachers is an unfair labor practice, although the School Board does have the right to replace them. ULP #17-75

"In Board of Trustees [of Billings School District] v. State ex rel. Board of Personnel Appeals ... our Supreme Court recognized that an employer has the right to inform striking employees of the employer's intent to permanently replace non-returning workers after a specified date.... Here, there is nothing contained in the letter which could be deemed, as a matter of fact, coercive." ULP #11-79

62.524: Employer Action - Reactions to Strikes - Lockouts

"During the school closure, a certain percentage of teachers and students were in the classrooms. If there was no labor disagreement in Columbia Falls, the schools would have been open and teachers employed. The teachers requested pay for the four days the schools were closed.... It is a negotiable item...." ULP #25-76

63. PICKETING

63.44: Refusal to Cross Picket Lines - Non-Strikers

See ULP #15-80.

71. UNFAIR PRACTICE PROCEDURES

71.1: Filing of Charge

"... Wood is not a party in the present action. It is the union that has accused Butte-Silver Bow of an unfair labor practice. And it is the union that has brought the present action to protect its contract rights." ULP #18-83 District Court (1985)

71.11: Filing of Charge - Contents of Charge

"If the School District had questions about the details of what the employer was being charged with, it could have filed a motion for a more definite statement. Failure to do so does not proscribe consideration of all the facts on the record and a determination of whether such facts constitute an unfair labor practice under Section 39-31-401(1) MCA as an independent violation aside from the alleged Section 39-31-401(5) MCA violations." ULP #29-84

In Billings School District v. Board of Personnel Appeals (1979), "the Montana Supreme Court held that fair notice of coercion was received by the District when the complaint stated that the District had violated Section 39-1605(1)(1) and (3) RCM (now codified as 39-31-401(1) and (5) MCA). When the charged party having read the pleadings should have been aware of the issues which it had to defend, the Court held fair notice is given. The Court further held that if the District had doubts about whether coercion was at issue, upon request it could have obtained a more definite statement of the charges." ULP #29-84

"We agree that Young was discriminated against after this charge was filed. Since he could have amended his complaint to include that discrimination had it not already been part of his original complaint, and since the City could therefore not possibly have been prejudiced thereby, we reverse the Dis-

strict Court on this point and grant the cross-appeal. The order of the Board [of Personnel Appeals] is reinstated.” ULP #3-79 Montana Supreme Court (1982)

See ULPs #20-78 and #23-80.

71.12: Filing of Charge - Notice to Other Party

“The Billings Education Association’s complaint complied with the notice requirements of the Montana Administrative Procedure Act when it alleged that the mailing of individual contracts violated section 59-1605(1)(a) and (3), RCM 1947 (now 39-31-401(1) and (5)), which prohibits coercion of employees in the exercise of certain rights protected by the collective bargaining law. The word ‘coercion’ is not a talisman without which the complaint fails. The allegations were sufficient to inform the board of trustees that the issue of coercion would be litigated.” ULP #17-75 Montana Supreme Court (1979)

71.13: Filing of Charge - Timeliness of Charge

“The Union’s final fair labor practice argument is that the Board erred in considering only events that occurred more than six months prior to the time the charge against it was filed and that this violated Section 39-31-404, which provides: ‘No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board....’ (The language of the statute is confusing, particularly in its codified setting. The ‘notice’ referred to originally meant a notice of formal hearing given upon the filing of the complaint, no preliminary consideration of the Board being required.... In 1983 the law was amended ... to provide for a preliminary investigation by an agent of the Board and a determination by the Board of ‘probable merit’ before the notice of formal hearing issued. [39-31-405(3)] To avert confusion, the section [39-31-404] should be amended to read: ‘The Board shall not consider any unfair labor practice alleged to have occurred more than six months before the filing of the charge.’ That is the meaning we attribute to the statute in the following discussion.” ULP #24-77 District Court (1985)

“The Union argues [Section 39-31-404] requires that an unfair labor practice charge be filed within six months after the grievance has arisen, and that there is no evidence of any unfair labor practice on the part of the Union within the six month period prior to the filing of the charge.... This is simply contrary to the facts as disclosed by the record. The grievance was not a one-time affair that began and ended with McCarvel’s request for assistance some seventeen months before he filed his charge. It was a continuing grievance that recurred every day that the Union refused to act.” ULP #24-77 District Court (1985)

“I believe Section 39-31-404 MCA is a statute of limitation on unfair labor practice charges, and not a general rule to exclude evidence that is more than 6 months old because of section 39-31-406(2) MCA.” ULP #26-79

“The following questions must be asked about the Defendant’s motion: (a) When could the complainant first file the charges in this case? If the charges could have only been filed within the 6 months before they were filed, the motion [to dismiss the unfair labor practice] must be denied. (b) Are the charges repeating and the gravamen are self contained within the 6 months before the charges were filed? If yes, the motion must be denied. (c) What is the effect on the charges of the evidence of events that happened more than 6 months before the charges were filed? If the evidence sheds light on the true character of matters occurring within the past 6 months and does not kindle a charge out of actions that happened more than 6 months before the charges were filed, the motion must be denied.” ULP #26-79

“The [unfair labor practice] charges were filed well within the 6 months after the City refused to bargain. Therefore, the motion [to dismiss the unfair labor practice] must be denied.” ULP #26-79

Section “39-31-404 requires an employee to file a charge within 6 months after an alleged unfair labor practice; it does not forbid the introduction of relevant evidence bearing on the issue of whether a violation has occurred during the 6-month period.” ULP #10-80 Montana Supreme Court (1982)

“[T]he alleged unfair labor practice would not have occurred until the [coach’s] salary was begun to be paid and when the Union had knowledge or should have had knowledge of that fact.” ULP #2-82

“The inaction of a party is not limitless.... [There is a] six months limitation set forth in Section 39-31-404 MCA.” ULP #31-82

“It is true that the Complainant failed to file an amended charge within the limits set forth in the Investigation Report. However, the Complainant could have, had the untimely amended charge been dismissed, filed the charge anew within the 6 months limitation set forth in Section 39-31-401 MCA. The re-filing of the same charge would have necessitated the entire process, up to the formal hearing, to be covered again in fruitless effort.” ULP #15-83

71.15: Filing of Charge - Refiling or Amended Charge

“We agree that Young was discriminated against after this charge was filed. Since he could have amended his complaint to include that discrimination had it not already been part of his original complaint, and since the City could therefore not possibly have been prejudiced thereby, we reverse the District Court on this point and grant the cross-appeal. The order of the Board is reinstated.” ULP #3-79 Montana Supreme Court (1982)

The Hearing Examiner denied the Employer’s motion to dismiss one of the counts “on the basis that it occurred after the first charge was filed” because if the action were “proved, it would tend to show the continuing conduct of the employer which the complaint alleges as the basis for this charge.” ULP #23-80

See also ULPs #16-78, #20-78, and #15-83.

71.16: Filing of Charge - Service

The Board of Personnel Appeals granted the County’s Motion to Dismiss the unfair labor practice charges and vacated the election held in UD #18-81 (which revoked the certification of AFSCME as the exclusive representative) because “a petition for unit determination filed by AFSCME with the Board of Personnel Appeals was served on Sheriff Onstad.” The Gallatin County Commissioners were the proper parties which should have been served. “[S]ervice upon the sheriff was not sufficient to constitute service upon the county commissioners.” ULP #3-82

71.211: Investigation and Complaint - Investigation - Burden of Proof [See also 09:3, 71.512, and 71.517.]

“[O]nce it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that it was motivated by legitimate objectives since proof of motivation is most accessible to him.” [NLRB vs. Great Dane Trailers, Inc. (1967) 388 U.S. 26, 65 LRRM 2465 at 2469] ULP #19-77

See also ULP #11-79.

71.222: Investigation and Complaint - Complaint - Contents

The Hearing Examiner would not read into the Union's complaint on termination of the labor agreement an additional complaint on subcontracting because the Union did not know about the subcontracting when it filed the unfair labor practice charge. ULP #18-78

The Hearing Examiner did "not agree with the Employer's contention that this matter is moot.... Surely the Union is entitled to have the Board of Personnel Appeals decide whether, at the time it happened, the Employer's action was an unfair labor practice." ULP #2-82

An unfair labor practice proceeding is not the forum in which to raise the question of whether or not an individual is a supervisor or management official. "The School Board ... could have petitioned for a determination by the Board of Personnel Appeals or it could have forced the union to file a petition for a unit determination and an election." ULP #29-82

71.223: Investigation and Complaint - Complaint - Amendment

"We agree that Young was discriminated against after this charge was filed. Since he could have amended his complaint to include that discrimination had it not already been part of his original complaint, and since the City could therefore not possibly have been prejudiced thereby, we reverse the District Court on this point and grant the cross-appeal. The order of the Board is reinstated." ULP #3-79 Montana Supreme Court (1982)

See also ULP #15-83.

71.227: Investigation and Complaint - Complaint - Dismissal [See also 32.81.]

See ULPs #14-74, #11-75, #12-75, #17-76, #29-76, #33-76, #37-76, #38-76, #8-77, #26-79, #47-79, #13-80, #15-80, #23-80, #38-80, #39-80, #10-81, #18-81, #19-81, #22-81, #30-81, #38-81, #39-81, #43-81, #45-81, #2-82, #5-82, #27-82, #31-82, #3-83, #9-83, #13-83, #16-83, and #2-85; and DRs #1-76 and #2-76.

71.230: Investigation and Complaint - Complaint - Other

"In view of the results of the election conducted by this Board on the Eastern Montana College campus resulting in the certification of the AAUP as the new bargaining agent, the issue in this declaratory ruling has become moot, and is therefore dismissed." DR #2-77

"I do not agree with the Employer's contention that this matter is moot.... Surely the Union is entitled to have the Board of Personnel Appeals decide whether, at the time it happened, the Employer's action was an unfair labor practice." ULP #2-82

"[T]he Board of Personnel Appeals did not hold a hearing for approximately three years after [Petitioner's] unfair labor practice was filed.... The Petitioner has failed to point out any statute or administrative rule which lends support to his position that it is the Defendant's responsibility to pursue the Complainant in setting a hearing date.... In addition, this Court feels that evidence exists to the effect that Petitioner did not intend to pursue the unfair labor practice until his discrimination charge before the Montana Human Rights Commission was decided adversely." ULP #38-80 District Court (1985)

71.31: Hearing Officer - Authority

The Board of Personnel Appeals and its designated agents do not have the discretion to refer a matter to arbitration. ULP #5-75

Agents of the Board of Personnel Appeals cannot determine the "professional competency" of a grievant. They can only determine whether or not an unfair labor practice occurred. ULP #5-75

See also ULP #8-75.

71.33: Hearing Officer - Disqualification

“On January 10, 1983, this Board received a Motion to Disqualify Hearing Examiner from the Petitioners. By Order issued by this Board of January 25, 1983, James Gardner withdrew as Hearing Examiner in this matter.” DC #2-81

71.5 Hearings

“On April 11, 1984, appellant began the present action alleging that . . . the Board denied him a timely hearing in violation of his due process rights.... The Board failed to set a hearing for 37 months. The Board repeatedly stated that Klundt’s charges had been put on hold at the request of the Union.... The requirements are the same whether dealing with an administrative agency or a court. Section 2-4-601, MCA, and section 2-4-612(1), MCA.... In this case the Board fulfilled the fundamental requirements of due process. Klundt received notice and was given an opportunity to be heard. The three-year delay is disturbing, but not fatal.” ULP #38-80 Montana Supreme Court (1986)

71.512: Hearings - Conduct of Hearings - Burden of Proof [See also 09.3, 43.9, 71.211, 71.517, 72.31, 72.32, and 72.35.]

“If there is substantial evidence that an employee was illegally discharged for union activity, then the burden is on management to show the reason for discharge was not union related.” ULP #28-76

“The U.S. Supreme Court in *NLRB vs. Great Dane Trailers, Inc.* (1967) 388 U.S. 26, 65 LRRM 2465 at 2469 ... [stated that] ‘once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that it was motivated by legitimate objectives since proof of motivation is most accessible to him’.” ULP #19-77. See also ULP #2-85.

“Substantial evidence has been presented that the non-renewal of Mr. Carlisle’s teaching contract was at least partially motivated by his union activities.” ULP #12-78

“One significant difference noted between the Federal [National Labor Relations] Act and the Montana Act is with respect to the prosecution of unfair labor practice charges.... Here, the intitial complainant in [the] case of a union or an employee retains both control and responsibility for the prosecution of the action before the Board and has the burden of sustaining its case by ‘a preponderance of the evidence’.” ULP #11-79

See also ULP #3-79.

71.517: Hearings - Conduct of Hearings - Evidentiary Standards [See also 09.3 and 71.512.]

A lack of proper foundation for evidence exists when the purported author of it is dead and there is no other evidence to show it is genuine. ULP #5-75

The report and final instrument for staff evaluation were admitted on the grounds that the subject matter is relevant to collective bargaining. ULP #16-75

Sections “59-1607(1) and 82A-1014(c) RCM 1947 ... basically state the Board of Personnel Appeals is not bound by statutory or common law rules of evidence.” ULP #18-78

“The City objected to the introduction of evidence on events subsequent to the filing of the unfair labor practice charge on the grounds that the charge, as filed, did not indicate that the alleged violation was a continuing one. The objection was properly overruled. To hold otherwise would require that Complainant file a charge after each proposal made by the City, if it believed the

City was refusing to bargain in good faith.... [B]y the very nature of the charge the continuing conduct of the party against whom it is filed is obvious.” ULP #19-78

“With the context of a motion for summary judgment which is to be denied if there is any question as to the existence of a material fact, this is a difficult standard to apply and one much like the duty of reasonable care in negligence actions.” ULP #11-79

“Mindful of the command of our Court in the Anaconda [Co. vs. General Accident Fire and Life Assurance Corp. et al] decision that when in doubt, deny, and also mindful of the fact that a hearing must be had in any event, the State’s Motion is denied.” ULP #11-79

“A difference between the National Labor Relations Act and Montana’s Act must be pointed out. The National Labor Relations Act provides that ‘any such proceeding shall ... be conducted in accordance with the rules of evidence ... while Montana’s Act provides ‘in any hearing the board is not bound by the rules of evidence prevailing in the courts.’ (Section 39-31-406(2) MCA).” ULP #26-79

“The District Court’s position on this issue was correct and the Hearing Officer should have included evidence of events occurring prior to Carlson’s merit increase.... For this reason we remand this case to the Board of Personnel Appeals for consideration and a decision in light of events occurring prior to Carlson’s merit increase as well as subsequent happenings.” ULP #10-80 Montana Supreme Court (1982)

See also ULPs #20-78 and #18-82.

71.518: Hearings - Conduct of Hearings - Hearing Officer’s Report

“This matter was deemed submitted the day the last brief was post-marked....” ULP #5-82

71.519: Hearings - Conduct of Hearings - Intervention

“ARM 24.26.103 provides ... that the right of intervention is discretionary and not mandatory or of right.” ULP #11-79

71.71: Review by State Board of Hearing Officer’s Report - Exceptions

The Board of Personnel Appeals “ordered that the record be returned to the Hearing Examiner for clarification and careful editing ... [and] that the Board defer action on this matter until a review is made by the Hearing Examiner and the Recommended Order resubmitted to the Board.” ULP #34-78

71.711: Review by State Board of Hearing Officer’s Report - Exceptions - Timeliness

“[S]ince the error was committed by the Board’s own agent, it cannot hold the Defendant responsible and therefore denies the Motion to Dismiss Objections and Exceptions as Untimely.” ULP #5-77

71.712: Review by State Board of Hearing Officer’s Report - Exceptions - Content

See ULPs #17-75 and #17-77.

71.72: Review by State Board of Hearing Officer’s Report - Standard of Review

See ULP #17-75.

71.8: Deferral to Arbitration [See also 47.54.]

See ULPs #5-75, #13-78, #3-79, #29-79, #5-80, #19-80, #34-80, #18-81, #19-81, #43-81, and #3-83 and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

71.81: Deferral to Arbitration - Standards for Pre-Arbitral Deferral [See also 47.54.]

“[T]he NLRB’s policy [is] to refrain from exercising jurisdiction in respect to disputed conduct which is arguably both an unfair labor practice and a contract violation when the parties have voluntarily established by contract a binding settlement procedure. [See Collyer Insulated Wire decision (1971).]” ULP #13-78

“Generally, the holding in Collyer established the following factors to determine whether deferral is appropriate: (1) the dispute must arise within the confines of a stable collective bargaining relationship, without any assertion of enmity by the respondent toward the charging party; (2) the respondent must be willing to arbitrate the issue under a clause providing for arbitration in a broad range of disputes, and (3) the contract and its meaning lie at the center of the dispute.” ULP #3-79 and #13-78

As of 1977, deferral is “no longer appropriate in cases of alleged employer discrimination or interference with protected rights.” ULP #3-79

“[A]n employer’s interference with the use of a contract’s grievance/arbitration procedure constitutes grounds for denial of prearbitral deferral.” ULP #5-80

A prerequisite for Collyer deferral is that the parties’ collective bargaining agreement must provide for binding arbitration. ULPs #18-81 and #19-81

“Absent specific allegations of fact supporting a violation of sections 39-31-401(1) or (3), MCA, the Board of Personnel Appeals can defer under the Collyer policy.” ULP #43-81

See also ULPs #19-80, #34-80, and #3-83.

71.811: Deferral to Arbitration - Standards for Pre-Arbitral Deferral - Amenability of Issues to Deferral

“In 1977, the National Labor Relations Board ... held that deferral was no longer appropriate in cases of alleged employer discrimination or interference with protected rights.” ULP #3-79

“[A]n employer’s interference with the use of a contract’s grievance/arbitration procedure constitutes grounds for denial of prearbitral deferral.” ULP #5-80

“The Collyer decision emphasized that the prearbitral deferral process was appropriate where the underlying dispute centered on the interpretation of application of the collective bargaining contract.... In practical application, the factor requires that: (1) the contract contain language expressly governing the subject of the allegation, (2) the issue be deemed appropriate for resolution by an arbitrator, (3) the center of the dispute be interpretation of a contract clause rather than interpretation of provision of the Act.” ULP #43-81

“The issue in dispute is covered by the collective bargaining agreement between the parties to this matter.... That collective bargaining agreement contains a grievance procedure which culminates in final and binding arbitration.... Therefore the dispute is clearly arbitrable.” ULP #43-81

“The dispute clearly centers on the interpretation of application of Section 11 of the 1980-82 collective bargaining agreement.” ULP #43-81

“The dispute is eminently suited to the arbitral process, and resolution of the contract issue by an arbitrator will probably dispose of the unfair labor practice issue.” ULP #43-81

“The dispute must center on the labor contract. In practical application, this factor requires that: (1) the contract contain language expressly governing the subject of the allegation, (2) the issue be deemed appropriate for resolution

by an arbitrator, (3) the center of the dispute be interpretation of a contract clause rather than interpretation of a provision of the Act.” ULP #27-82

“The National Labor Relations Board has not deferred in cases where: (1) the contract language on its face was illegal or may have compelled the arbitrator to reach a result inconsistent with the policy of the Act, (2) the respondents’ argument constructing the contract language to justify its conduct was ‘patently erroneous,’ (3) the contract language was unambiguous (and therefore the special competence of an arbitrator was not necessary to interpret the contract).” ULP #27-82

See also ULP #13-78 and ULP #3-79 Montana Supreme Court (1982).

71.812: Deferral to Arbitration - Standards for Pre-Arbitral Deferral - Authority of Tribunal Making Determination

The Board of Personnel Appeals and its agents do not have the power to defer matters to arbitration. ULP #5-75

“The Board clearly has the authority to hear this complaint under the provisions of Section 59-1607, RCM 1947. However, it is determined that the policies and provisions of the Act would best be effectuated if this Board were to remand this complaint to the grievance-arbitration procedure specified by the collective bargaining agent of the parties.” ULP #13-78

“[I]f the Board of Personnel Appeals defers to arbitration pursuant to a contract, the Board of Personnel Appeals would not dismiss the unfair labor practice charges but instead would retain jurisdiction of the charges for purposes of insuring that arbitration in fact takes place and to determine whether the arbitration procedures were conducted fairly. Thus the defendant’s motion to *dismiss* will not be granted even if the Board of Personnel Appeals does defer to arbitration.” ULP #43-81

“This Board retains jurisdiction for the purpose of hearing this complaint as an unfair labor practice charge if: (1) the respondent does not ... file a written statement..., (2) an appropriate and timely motion adequately demonstrates that this dispute has not, with reasonable promptness after the issuance of this order, been resolved in the grievance procedure or by arbitration; or (3) an appropriate and timely motion adequately demonstrates that the grievance or arbitration procedures were not conducted fairly.” ULP #43-81

“The Board clearly has the authority to hear this complaint under the provisions of 39-31-403, MCA. However, it is determined that the policies and provisions of the Act would best be effectuated if this Board were to remand this complaint to the grievance-arbitration procedure specified by the collective bargaining agreement of the parties.” ULP #27-82

“The Board retains jurisdiction for the limited purpose of entertaining a motion for further consideration of this case upon a showing of any of the following: (1) The respondent does not, within 20 days of receipt of this Order of Deferral, file a written statement with this Board indicating that it is willing to arbitrate this issue and to waive the procedural defenses that this grievance is not timely filed; (2) an appropriate and timely motion adequately demonstrates that this dispute has not, with reasonable promptness after the issuance of this Order of Deferral, been resolved by an amicable settlement in the grievance procedure or by arbitration; (3) an appropriate and timely motion adequately demonstrates that the grievance or arbitration procedures were not fair and regular or reached a result repugnant to the purposes and policies of the Act; (4) an appropriate and timely motion adequately demonstrates that the grievance settlement or arbitration decision did not address and answer all the complaints alleged in the unfair labor practice charges.” ULP #27-82

See also ULP #3-79.

71.813: Deferral to Arbitration - Standards for Pre-Arbitral Deferral - Availability of Arbitration

“One of the key elements of the Collyer Doctrine is the existence of final and binding arbitration in the grievance procedure....” ULP #34-80

“Even though a question of contract interpretation was the essence of this unfair labor practice charge, the matter was not deferred under the Collyer doctrine because the charge was brought by the Employer, who had no recourse to the contract’s grievance procedure, and because the parties’ contract did not provide for binding arbitration, a prerequisite for Collyer deferral.” ULP #18-81

See also ULPs #13-78, #3-79 and ULP #3-79 Montana Supreme Court (1982), #19-81, and #43-81.

71.814: Deferral to Arbitration - Standards for Pre-Arbitral Deferral - Positive Assurance Test

“There is no evidence that the parties’ past or present relationship would render the use of the grievance-arbitration process futile.” ULP #43-81

“The dispute must arise within the confines of a stable collective bargaining relationship, without any assertion of enmity by the respondent to the charging party. The National Labor Relations Board applies its ‘usual deferral policies’ if: ‘... there is effective dispute-resolving machinery available, and if the combination of past and presently alleged misconduct does not appear to be of such character as to render the use of the machinery unpromising or futile...’” ULP #43-81

“There is no evidence that this dispute does not arise within the confines of a stable collective bargaining relationship.” ULP #43-81

The National Labor Relations Board “has declined to defer ... when ... (1) the unfair labor practice charge alleged that there was no stable collective bargaining relationship, (2) the respondent’s conduct constituted a rejection of the principles of collective bargaining or the organizational rights of employees, (3) the unfair labor practice charge alleged that the employer’s conduct was in retaliation or reprisal for an employee’s resort to the grievance procedure or otherwise struck at the foundation of the grievance and arbitration mechanism, (4) the employer had interfered with the use of the grievance-arbitration procedure.” ULP #27-82

71.816: Deferral to Arbitration - Standards for Pre-Arbitral Deferral - Willingness of Parties to Arbitrate

“The respondent must be willing to arbitrate the issue which is arbitrable. Criteria related to this factor are: (1) the respondent must be willing to arbitrate and/or willing to waive the procedural defense that the grievance is not timely filed, (2) the dispute must be clearly arbitrable or at least arguably covered by the contract and its arbitration provision, (3) a final and binding procedure must exist.” ULP #43-81. See also ULP #27-82.

“Because the respondent cited the availability and appropriateness of the contractually agreed upon grievance-arbitration procedure as an affirmative defense to this unfair labor practice charge, and has moved to defer to arbitration pursuant to Collyer, it is assumed that the respondent is willing to arbitrate this issue and to waive the procedural defense that the grievance is not timely filed.” ULP #43-81

“Under this rule, the fact that the actions of the employer (listed in an unfair labor practice complaint) occurred after the termination of a collective bargaining agreement, does not render the grievance over the employer’s actions non-arbitrable.” ULP #27-82

See also ULPs #13-78 and #3-79 and ULP #3-79 Montana Supreme Court (1982).

71.82: Deferral to Arbitration - Standards for Deferral to Arbitration Award [See also 47.54.]

“[T]hree prerequisites for deferral to arbitration must be met. First, the arbitration proceedings must have been fair and regular; second, the parties must have agreed to be bound by the award; and third, the decision must not be clearly repugnant to the purposes of the National Labor Relations Act.... [If these requirements are] met, the NLRB will adopt the arbitration award as the complete remedy for [the] unfair labor practice [charge] related to the dispute.” (See *Spielberg Manufacturing Co.*, 112 NLRB 1080, 1082, 36 LRRM 1152 [1944].) ULP #39-80

An “employer’s recalcitrance after arbitration [does] not preclude deferral to the award.” (See *IBEW Local 715 vs. NLRB*, 85 LRRM 2823 [1974].) ULP #39-80

The arbitration award met all the prerequisites of the *Spielberg* doctrine so the Board deferred to the award and required the Complainant to seek enforcement of the award in the courts. ULP #39-80

“This Board will review the issue of whether deferral to the arbitrator’s decision should be made using the standards set forth in the *Spielberg* doctrine and not by use of the *Olin Corp.* [115 LRRM 1056 (1984)] doctrine. The *Olin Corp.* doctrine appears to be a radical departure from previous National Labor Relations Board precedent and is not necessarily the law. The *Spielberg* doctrine has been approved by the Courts and the *Olin Corp.* doctrine has not been approved by the Courts. This Board finds that the *Spielberg* doctrine is the applicable standard of review for determining when to give deference to an arbitrator’s decision.” ULP #3-83

71.821: Deferral to Arbitration - Standards for Deferral to Arbitration Award - Award Not Repugnant to Act

“In the case of *Inland Steel Co.*, 263 NLRB 147, 117 LRRM 1193 (1982), the National Labor Relations Board set forth this test. ‘[T]he test of repugnance under *Spielberg* is not whether the Board would have reached the same result as an arbitrator, but whether the arbitrator’s award is palpably wrong as a matter of law.’ Examining the conduct of the association members who engaged in sabotage of institution property, hiding institution property, and using inmates from the institution to help in some of the conduct, and examining the arbitrator’s decision, which affirmed with some modifications the institution’s discipline of these members, we cannot conclude that the arbitrator’s decision is palpably wrong under the Act.” ULP #3-83

See also ULP #39-80.

71.822: Deferral to Arbitration - Standards for Deferral to Arbitration Award - Binding Nature of Award

See ULPs #39-80 and #3-83.

71.823: Deferral to Arbitration - Standards for Deferral to Arbitration Award - Consideration of Unfair Practice Issues

In *Atlantic Steel Co.*, 245 NLRB 814, 102 LRRM 1247 (1979), the National Labor Relations Board stated: “[W]hile it may be preferable for the arbitrator to pass on the unfair labor practice directly, the Board generally has not required that he or she do so. Rather, it is necessary only that the arbitrator has considered all of the evidence relevant to the unfair labor practice in reaching his or her decision.’ Employing the *Atlantic Steel* principle.... [the Board of Personnel Appeals found] that the arbitrator did consider all of the evidence relevant to the unfair labor practice charge in reaching his decision.” ULP #3-83

71.824: Deferral to Arbitration - Standards for Deferral to Arbitration Award - Fair and Regular Nature of Proceedings

See ULPs #39-80 and #3-83.

71.9: Petition for Rehearing

“Respondents may, within 15 days from the date of this Order, make application to the Board in writing for leave to present additional evidence. The basis for said application shall be: (1) that due to limited preparation time respondents were unable to present such evidence at the hearing before the Hearing Examiner; and (2) such additional evidence is material. If the Board finds such application to be meritorious it will, pursuant to Section 59-1607(2) ... order said additional evidence be presented before the Hearing Examiner and made part of the record.” ULP #4-73

Since no additional evidence was submitted by the Respondent, the Respondent’s Exceptions were dismissed and the request for a rehearing de novo was denied. ULP #4-73

72: EMPLOYER UNFAIR PRACTICES

“Unfair labor practices are those matters enumerated in 39-31-401 and 402 MCA. [See] Ford v. University of Montana 598 P.2d 604 (1979).” ULP #19-80

72.1: Interference, Coercion and Restraint

“It was not proven that teachers affiliated with the Association were treated in a manner inconsistent with the practices the Board directed toward the non-affiliated members of the teaching staff.” ULP #14-76

“[F]ew cases in the federal sector have turned on a consideration of Section 8(a)(1) alone. The trend has been to consider questions of Section 8(a)(3) discrimination along with questions of Section 8(a)(1) coercion.” ULP #2-79

The NLRB adopted the rule that “‘motive is not the critical element in a section 8(a)(1) violation.... The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the act.’ [Cooper Thermometer Co., 154 NLRB 502, 59 LRRM 1767 (1965) p.10]” The Board of Personnel Appeals adopted “the same rule, with respect to 39-31-401(1) MCA violations.” ULP #3-79

According to “Section 39-31-401(1) ... [it is an] unfair labor practice for a public employer to: ‘interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201...’.” ULP #44-79

See also ULPs #7-77, #19-77, and #19-79 and ULP #3-79 Montana Supreme Court (1982).

72.11: Employer Unfair Practices - Interference, Coercion and Restraint - Restrictions on Union Activity [See also 22.5.]

“Where there is a conflict between the employer’s right to conduct the public’s business and the employees’ right to engage in concerted activities, one must balance their respective rights.” ULPs #19-80 and #23-80

“[T]he employer’s right to control the activities of its employees during the workday is supreme to an employee’s right to hold a meeting during those working hours without permission.” ULP #19-80

“Taken together, if all ten counts under the charge had been proved, I must conclude complainant would still have fallen short of convincing me that an unfair labor practice was committed. There was no showing that concerted activities had been affected in the least. Typically these kinds of charges

(8[a][1] of the NLRA) involve things such as discharge or discipline for engaging or attempting to engage in protected concerted activity ... not ... bickering between employees and supervisors.” ULP #23-80

See also ULPs #5-77 and #3-79; and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

72.112: Interference, Coercion and Restraint - Restrictions on Union Activity - Activities of Employees on Duty

“The only uncontroverted testimony on the subject of [prohibiting talk about the union is] ... to the effect that employees could talk about whatever they wished, as long as it did not interfere with their work. Such seems a reasonable policy.” ULP #23-80

For a supervisor “to ask if a meeting was well-attended does not constitute an interference with union activities.... This inquiry was sufficiently isolated so that it may not be construed to amount to an unfair labor practice.” ULP #23-80

See also ULPs #42-79 and #19-80.

72.114: Interference, Coercion and Restraint - Restrictions on Union Activity - During Work Hours

“The District did not violate ... [Section] 401 by reprimanding and issuing a warning letter to Ms. Knippel for calling the April 16 and 18, 1980, teacher meetings ... [and] by requiring that meeting on school time be cleared with the principals of the three buildings.” ULP #19-80

See also UD #21-78 and ULPs #42-79 and #23-80.

72.115: Interference, Coercion and Restraint - Restrictions on Union Activity - Literature Distribution

The Employer seized copies of the contract distributed to the union members. This act is not condoned, but it is deemed so trivial as to not constitute an unfair labor practice. ULP #12-74

The use of an unauthorized evaluation form to survey teachers’ opinions about one of the District’s principals “was protected concerted activity. Whether it violated District Policy is immaterial. If it did in fact violate policy, the policy is wrong and infringes upon basic employee rights under Section 201. Unilaterally adopted policies cannot be utilized to interfere with employee rights.” ULP #19-80

“The District did violate ... [Section] 401(1) ... by disciplining Ms. Knippel for distributing the evaluation form.” ULP #19-80

72.118: Interference, Coercion and Restraint - Restrictions on Union Activity - Time of Adoption Rule

A ten day time restriction for adoption of a contract does not allow the Union to effectively respond, and so forces employees to act individually. This is an unfair labor practice. ULP #11-76

72.119: Interference, Coercion and Restraint - Restrictions on Union Activity - Type of Literature

One of the questions this recommended order addressed was “the width and breadth of protected concerted activities when a labor organization has allegedly solicited, compiled and publicly distributed a survey report.” ULP #5-84

“[S]ince the Billings Education Association conducted a survey subsequent to the Lincoln School Survey, the March 7 letter and the March 9 meeting did not constitute a threat to discipline members for engaging in protected concerted activities in violation of Section 39-31-401(1) MCA.” ULP #5-84

72.13: Interference, Coercion and Restraint - Benefits or Reprisals

See ULP #34-82.

72.131: Interference, Coercion and Restraint - Benefits or Reprisals - Threats of Reprisal [See also 72.151, 72.17, and 72.55.]

“The Defendant issued the individual contracts during the height of the strike.... What the contract in essence says is, ‘sign it and return to work or you are out of a job.’ Through that contract, the Defendant attempted to coerce the teachers into returning to work and thus giving up their right to strike.... [T]he School District has no right to discharge the teachers and thereby to interfere with the teachers’ right to strike.” ULP #17-75

“If the employer’s communication [of his intent to replace striking workers] is an attempt to interfere with his employees’ right to engage in concerted activities, then he has committed an unfair labor practice.” ULP #17-75 Montana Supreme Court (1979)

The School Board was charged with violating Section 59-1605(1)(e) by: informing the teachers “that they must execute individual contracts” informing them “that by signing the individual contracts they must comply with the Board’s final offer and would be subject to all of its terms although the offer was not agreed to by the Association; and by engaging “in a pattern of individual bargaining by by-passing the Association which is the exclusive bargaining representative.” In addition, the School Board was charged with violating Section 59-1605(1)(a) by: threatening the teachers “with discharge unless individual contracts were signed” and using “the public media to announce the teachers’ pending discharges in order to coerce their signing.” The Board of Personnel Appeals concluded that the School Board had committed an unfair labor practice as charged. ULP #25-76

“The individual contracts must not be used to circumvent, delay or hamper any of the rights granted public employees in Section 39....” ULP #25-76

At the Christmas party, “the language and manner that Mr. Cady used in inquiring as to who ‘was out to get him’ were of such a nature as to convey a verbal threat to the employees involved in the conversations and also to other employees.” ULP #41-76

“[A]n employer’s statements are permissible under the following conditions: (1) that the statements contain no threats or promises, express or implied; (2) that predictions made must be beyond the control of the employer; [and] (3) that predictions made must be as to *likely consequences*, be based on *objective fact*, and be *demonstrably probable*.” ULP #25-77

“The Defendant on August 5, 1977, threatened to place Association members under personal surveillance or, fire them outright for alleged concerted union activities.... The Kalispell Police Protective Association [KPPA] charged that the City interfered with the protected right of the KPPA to engage in a concerted activity. In this case, there was not a concerted activity (slow-down) implemented by the KPPA. Therefore, I cannot find that the City committed an unfair labor practice.” ULP #27-77

“[A]n employer’s conduct during a union’s organizational efforts and up to the actual election is judged more severely than that same conduct would be judged after the labor organization has won the election and is well established as the employees’ representative for collective bargaining.” ULP #30-77

“(1) [T]here was no union organizational effort or pending election affecting either the Complainant or Respondent or their organizations, (2) there was no threat by the Superintendent to take reprisals against the employees; he used the words ‘could put further strains..., could lead to more public resentment...’, (3) the Superintendent’s statement ‘strict application of the contract ... will make a far less cooperative relationship among teachers and adminis-

trators' cannot be construed as a threat to the employees right to file grievances or to any other of their rights." Therefore, these statements were not unfair labor practices. "This is not to say that those same statements made in a different social and political environment and made prior to an election or during an organizational effort could not ever constitute an unfair labor practice." ULP #30-77

"With the parties agreeing the teachers were already employed, with the wages in the individual teaching contracts not being governed by the master labor agreement, with the issuances of the individual teaching contracts having the effect of telling the teachers they may do as they wished but the School District would determine the work conditions, I find the School District interfered with the collective bargaining process." ULP #20-78

"[T]he Defendant amplified the individual bargaining by threatening to withhold wages and, by letter ... threatened to terminate employees for failing to sign individual contracts." ULP #23-78

"[T]he Employer's action [in laying off 18 full-time staff bargaining unit positions] was 'inherently destructive' of important employee rights, ... such action severely undermined union membership, and ... if the action was not corrected, it would undermine the Union constituents' confidence in the Union, thereby discouraging Union membership.... [A] violation of 39-31-401(3), MCA has occurred and ... the proper remedy must be implemented to restore the proper balance between the asserted business justifications and the employee rights guaranteed by Montana Statute." ULP #29-79

"Section 39-31-401(2) MCA prohibits interference with the formation of a labor organization. One would be hard pressed to find a more classic example of a violation under the section than Commissioner Evans' conduct toward two of the Public Safety Officers. Her threat to abolish the program clearly interfered with the unionization effort...." ULP #30-80

"By threatening to cut work hours [of 2 employees]... , by showing [them] a cost comparison between a proposed subcontracting bid from a cleaning company and the cost of the School District doing the same work--eliminating the employees jobs, and by asking [them] to talk to [two other employees] about the union's actions, demands and expectations, the ... School District ... did violate Section 39-31-401(1), MCA of the Collective Bargaining for Public Employees Act." ULP #18-82

"[S]ince the Billings Education Association conducted a survey subsequent to the Lincoln School Survey, the March 7 letter and the March 9 meeting did not constitute a threat to discipline members for engaging in protected concerted activities in violation of Section 39-31-401(1) MCA." ULP #5-84

See also ULP #37-76.

72.134: Interference, Coercion and Restraint - Benefits or Reprisals - Withdrawal of Benefit

"From the facts stipulated to in this case the conclusion which seems logical is that Defendant's conduct in paying the twenty teachers for seventeen days which they did not work nor stand ready on call is inherently destructive of the rights of the remaining, striking teachers." ULP #34-82

"The conduct of Defendant will affect future bargaining because the realization will be present on the minds of union supporters that the employer will award special benefits to non-strikers, if the union decides a strike is necessary to promote its bargaining goals. A divisive wedge will have been driven between members of the union and work force, if the situation is not remedied." ULP #34-82

72.151: Interference, Coercion and Restraint - Interrogation - of Employees [See also 72.131, 72.17, and 72.55.]

"These interrogations, questions, inquiries, etc., of Association members about their labor organization activities were clearly in violation of the Montana Act." ULP #41-76

"I find that Mayor Happ did not attempt to require Mr. Gifford to disclose how each individual Association member voted in a secret ballot election." Therefore, the City of Kalispell "has not violated Section 59-1605(1)(a) and (c) RCM 1947." ULP #27-77

"It is true that the School District did not discipline anyone or specifically threaten to discipline anyone. But this fact is not the test. The test is whether the interrogation tends to be coercive." ULP #5-84

See also ULP #23-80.

72.17: Interference, Coercion and Restraint - Direct Dealing with Employees [See also 72.131, 72.151, and 72.55.]

See ULPs #11-75, #17-75, #20-76, #25-76, #33-76, #41-76, #25-77, #27-77, #30-77, #16-78, #20-78, #23-78, #11-79, #7-80, #30-80, #34-80, #30-81, #2-82, #18-82, #29-82, and #34-82 and ULP #17-75 District Court (1978) and Montana Supreme Court (1979).

72.18: Interference, Coercion and Restraint - Other Interference

Derogatory remarks by the Employer about unions do not constitute grounds for a charge of interference. ULP #8-75

"In spite of the existence of these [anti-Association] attitudes [held by officials of the School District], it was not proven that teachers affiliated with the Association were treated in a manner inconsistent with the practices the Board directed toward the non-affiliated members of the teaching staff." ULP #14-76

"The evidence is inconclusive that [the] Superintendent ... had exclusive opportunity and motive to tamper with certain letters [the Montana Education Association sent to teachers in the School District] as there were other persons who had possible motive and opportunity." ULP #6-84

"City street department employee's record of filing grievances affected the judgment of city officials responsible for laying him off and keeping a worker on the payroll who was of the same class, but with less seniority. This constituted an unfair labor practice within the meaning of this section's provision making it an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter." ULP #3-79 Montana Supreme Court (1982)

"[T]he School District's act of refusing to accept the Association's authorization form had a significant effect on teachers' right to assist the association. Moreover, I find that the district had no legitimate or significant interest in insisting that its own form be used. The harm done to teachers' interest in assisting the Association far outweighs even the perceived interest of the District. The District's act has created a visible and continuing obstacle to the free exercise of teacher rights under the Collective Bargaining for Public Employees Act." ULP #29-84

See also UD #21-78.

72.2: Domination or Support of Employee Organization [See also 22 and 73.2.]

"Flathead County School District No. 5 violated MCA Section 39-31-401(1) and (2) ... by withholding monies from employee paychecks in the amount of dues of ... Montana Education Association without contractual authority or individual authorization, thereby interfering with 39-31-201 rights

and dominating and assisting in the formation and administration of a labor organization, namely, the Kalispell Education Association (KEA) and Montana Education Association.” ULP #2-79

Encouraging employer domination constitutes an unfair labor practice, but advising employees that they have a right to confer with the employer does not necessarily constitute such an action. ULP #10-74

“The test of whether a union is employer controlled is subjective and must be viewed from the point of the employees.” ULP #16-84

“The National Labor Relations Board generally finds two degrees of violations of Section 8(a)(2) [comparable to 39-31-401(2) MCA]. First are those cases where the employer’s activity is so extensive as to constitute domination of the labor organization. There the National Labor Relations Board will order disestablishment of the union.... The second class of cases are those where the National Labor Relations Board finds the employer’s activity was limited to interference and support which never reached the point of domination. The National Labor Relations Board in such cases does not order the extreme remedy of disestablishment. In either class of cases, the underlying principle is that the employer engaged in an unlawful means of undermining employee rights to effective bargaining representation of their own choice. Such conduct by the employer goes beyond interference with other protected collective bargaining rights and is aimed at the labor organization as an entity.” ULP #16-84

See also ULPs #7-77, #3-79, and #44-79 and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

72.21: Domination or Support of Employee Organization - Recognition Practices [See also 31 and 73.112.]

An employer has the right to insist upon bargaining about a “recognition” clause to define the status of new classifications and reclassifications of employees. The employer’s refusal to deduct dues for the newly certified employee representative while a contract with the former union is still in effect is not an unfair labor practice. ULPs #20-75 and #19-76

“The employees approached the Mayor with a proposed agreement and after slight modification the City signed the agreement recognizing “the City of Dillon Employees Association” as the exclusive representative of the employees. After this, progress toward negotiations with AFSCME came to a halt. AFSCME’s representative ... was even refused a copy of the agreement.” ULP #34-84

See also ULP #20-78.

72.22: Domination or Support of Employee Organization - Election Practices [See also 35.5 and 35.53.]

The mention of the Montana Public Employees Association in a letter to employees did *not* constitute an unfair labor practice, even though it was sent just prior to the election of the bargaining representative, because it could not have affected the election and it only reported relevant facts objectively. ULP #9-74

See also ULP #36-77.

72.23: Interference, Coercion and Restraint - Domination or Support of Employee Organization - Interference with Internal Union Activities

An employer’s refusal to bargain with the representative of the employees’ own choosing in effect determines the membership of the union negotiating team and constitutes interference in union activities. ULP #4-76

Attempted interference by an employer does not in itself constitute an unfair labor practice. Actual domination must exist in order for employee rights to be affected. ULP #10-74

“The act of the Fire Chief in asking his Battalion Chiefs to submit a list of duties which the temporary employees might be able to perform is a far cry from interfering with the effectiveness of the Union as the representative of the bargaining unit members.” ULP #16-84

See also ULPs #13-76 and #19-80.

72.3: Discrimination Related to Union Membership or Concerted Activity

The County Road Boss “did not call Campbell back to work as soon as other employees because of the charge he had filed with this Board. This is clearly a violation of 39-31-401(4) and had the the charge been made we would have found in Campbell’s favor. This situation, along with past history, will certainly color any future organizational attempts by employees in Stillwater County.... employees rights under the Montana Collective Bargaining for Public Employees Act are broad and it will behoove the County Commissioners to see that all their supervisors are knowledgeable of employee rights and are careful not to abridge these rights.” ULP #2-85

See also ULP #19-77.

72.31: Discrimination Related to Union Membership or Concerted Activity - Criteria for Determining Violation [See also 43.9, 71.512, and 72.35.]

“The hearing examiner adopts the logic of the U.S. Supreme Court in its determination that an employer will be presumed to have discriminated against the employee for the purpose of encouraging or discouraging union activity if such encouragement or discouragement is a ‘foreseeable consequence.’ ... The ‘foreseeable consequence’ of terminating Ms. Widenhofer for union activities is the discouragement of union activity....” ULP #28-76

“*Mt. Healthy* balanced first amendment rights against the need of a school district to be able to dismiss a person who obviously deserved to be dismissed for permissible reasons.... The *Mt. Healthy* ‘but for’ test is adopted for dual-motivation cases under Montana’s Collective Bargaining Act. This adequately protects the interests and rights of both parties.” ULP #28-76 Montana Supreme Court (1979)

“Basically, the public employer may exercise his right to hire, promote, transfer, assign, and retain employees so long as he does not infringe upon the employees’ rights.... The issue is not so much whether there is a legitimate basis for firing ... an employee, but whether that basis is the sole reason for the action. Because improper motive distinguishes illegal action from legal action....” ULP #39-76

“If I remove all labor activities from the Record in this case, the School Board fails to demonstrate that they would have reached the same decision [not to rehire Velk and Nau] in the absence of such protected labor activities.” ULP #19-77

“If the discharge was partially motivated by the employee’s union activity, it is unlawful.” ULP #12-78

“[T]o show a violation of 59-1605(1)(c) RCM, 1947, it is necessary to prove or infer (1) employer discrimination as to hire or tenure of employment or any term or condition of employment; (2) resulting encouragement or discouragement of membership in a union; and (3) unlawful intent.... The necessity of specific evidence of a discriminatory motive depends on which of two categories the employer’s act falls into: (1) discriminatory conduct ‘inherently destructive’ of important employee rights, or (2) discriminatory conduct having a ‘comparatively slight’ adverse effect on employees.” ULP #16-78

“*Western Exterminator Co. vs. NLRB* (9th Cir. 1977), 565 F.2d 1114 ... states the rule that where a discharge is motivated by both a legitimate business consideration and protected union activity, the test is whether the business reason or the protected union activity is the moving cause behind the discharge.... This Court adopted essentially the same test in *Board of Trustees of Billings [School District] v. State [Board of Personnel Appeals]* (1979)....” ULP #3-79 Montana Supreme Court (1982)

In *Wright Line* (251 NLRB 105, 105 LRRM 1169 [1980]), “the NLRB: (1) Adopted the ‘but for’ test used by the U.S. Supreme Court in *Mt. Healthy City School District vs. Doyle* [429 U.S. 274, 97 S.Ct. 568 (1977)].... (2) Distinguished ‘dual motivation’ cases from merely ‘pretextual’ cases.... (3) Set forth the following test for dual motivation cases: ‘... First we shall require that ... [the Complainant] make a prima facie showing sufficient to support the inference that protected conduct was a ‘motivating factor’ in the employer’s decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct’.” ULP #42-79

“Dual motivation cases should be distinguished from the so called pretext cases where the reasons advanced by the employer to explain a contested discharge were not the real reasons for the termination; where the purported good cause was merely a smokescreen.... In dual motivation cases the discharged employee is said to have provided the employer with some cause for disciplinary action. At the same time, however, the evidence indicates the employer also had a discriminatory reason for making the discharge.... The task then is to determine whether the unlawful reason played any part in the decision.” ULP #10-80

“Where it is found that the discharge or other discipline imposed by the employer is, in fact pretextual, i.e., there is not a legitimate business justification to be found, a violation of 39-31-401 (3) MCA may be found without further testing under the dual motive doctrine.... But where the reason for imposing the discipline is twofold, one being a legitimate business reason, the other being a reaction to the employee’s protected union activities; a true dual motive situation is presented.... But concluding the reason given for the discharge (i.e., insubordination and non-cooperation) was not pretextual and was not a mere sham, is not the equivalent of saying the protected activities did not play a role in the decision. For that reason we must look at the facts as they relate to the two-part test set forth in [*Mt. Healthy*].” ULP #10-80

“Dual motivation cases must first ... be distinguished from pretext cases where the reasons advanced by the employer to explain the disciplinary action were not the real reasons, but rather were a mere smokescreen for the true reasons.... The task becomes one of determining what role the protected activity played in the decision of the employer to discipline.... The NLRB, in *Wright Line* ... stated: ‘... Since no legitimate business justification for the discipline exists, there is, by strict definition, no dual motive’.” ULP #38-81

The *Mt. Healthy* “test requires that the employee show that the protected conduct was a substantial or motivating factor in the employer’s decision to discipline. Once that is done, the burden shifts to the employer to show it would have reached the same decision even in the absence of the union activity.” ULP #38-81

“Under the dual motive doctrine the employee is said to have given the employer cause for disciplinary action and the employer is said to have had a discriminatory reason for imposing the discipline. If the facts of the case show both permissible and impermissible reasons for the employer’s action, the task then becomes one of determining motivation.... However, when the evidence reveals that the reason purported by the employer is a sham, the justification can be called merely pretextual ... and discrimination may be found without further testing under the dual motive doctrine.” ULP #29-82

“Even though it is unnecessary to go beyond the pretext aspect of the analysis of the employer’s assertion, an application of the ‘but for’ test ... renders the same conclusion: the School Board removed Ms. Howe’s head teacher duties because of her union activities.” ULP #29-82

“Specific evidence of the employer’s intent to discourage union membership is not necessary in discrimination cases. It is sufficient to presume that the natural consequence of the discriminatory action will chill union activity and membership in the union. *Radio Officers Union vs. NLRB*, 347 U.S. 17, 33 LRRM 2417 (1954).” ULP #29-82

See also ULPs #3-73, #4-73, #5-73, #41-76, and #9-83 and ULP #10-80 District Court (1985).

72.311: Discrimination Related to Union Activity or Concerted Activity - Criteria for Determining Violation - Anti-Union Animus [See also 72.312 and 72.323.]

The employer’s expression of anti-union sentiment (for example, telling two employees that he did not want them to join the union) is considered evidence of anti-union animus and provides the basis for an unfair labor practice charge in the discharge of a union member employee. ULP #5-75

The “anti-union bias of Superintendent Wilson ... is sufficient to shift the burden to management to prove its innocence.” ULP #12-78

“Mr. Young was laid off and Mr. Spilde retained by the City because Young had filed a number of grievances.... The City’s discriminatory motive was a factor, and probably the dominant factor, in its decision to lay off complainant and thereby violate the agreement. Its actions caused unrest among union members and had the effect of discouraging membership.” ULP #3-79

“An anti-union act was committed when Mr. Croff presented the tainted evaluation [of Ms. Widenhofer] to the trustees.” ULP #28-76 Montana Supreme Court (1979)

“[W]ith respect to an alleged 39-31-401 (3) MCA violation and the employer’s intent, discriminatory conduct motivated by union animus and having the foreseeable effect of either encouraging or discouraging union membership must be held to be in violation of employee rights.” ULP #10-80

“Weighing the above evidence by the “but for” test, the record contains only a thread of evidence ... that the School District would have not subcontracted the work if the Union did not represent the employees.” ULP #9-83

“In addition to the employer proving a legitimate business objective, the plaintiff also failed to meet the burden of proof on the question of anti-union motivation.” ULP #2-85

See also ULPs #13-76, #28-76, #19-77, #18-78, #42-79, #30-80, #38-81, and #29-82 and ULP #3-79 Montana Supreme Court (1982).

72.312: Discrimination Related to Union Membership or Concerted Activity - Criteria for Determining Violation - Knowledge of Employee’s Union Activity [See also 72.311 and 72.323.]

Dealing with an employee in the capacity of union steward is a basis for presuming the employer has knowledge of the employee’s union activity. ULP #5-75

The employer’s knowledge of the role of an employee in union activities is seen as a basis for the discrimination charge. ULPs #5-75 and #15-74

“Mr. Mueller was suspended because he failed to follow the directives of his employer.... The evidence does not support the charge that the City’s decision to discipline Mr. Mueller was illegally motivated by its consideration of his union activities.” ULP #42-79

See also ULPs #5-73, #15-76, #28-76, #39-76, #19-77, #12-78, #10-80, #19-80, #38-81, and #29-82.

72.314: Discrimination Related to Union Membership or Concerted Activity - Criteria for Determining Violation - Notice; Prior Warning

The lack of any indication of dissatisfaction with the employee, plus the fact that other employees were customarily warned and allowed to correct mistakes, provides the basis for an unfair labor practice charge in the discharge of a union member employee. ULP #5-75

See also ULPs #15-76, #41-76, and #42-79.

72.315: Discrimination Related to Union Membership - Criteria for Determining Violation - Prior Satisfactory Record

“Although a good evaluation and merit increase cannot excuse subsequent misconduct, it seems clear that it should serve as an indication of the lack of seriousness that the City attached to the prior conduct.” ULP #10-80

“What the NLRB cases do hold is that a prior good record or merit increase serve to indicate, along with other factors, either inconsistency on the part of the employer or that the disciplinary action was in retaliation for union activities rather than for the reason asserted by the employer.” ULP #10-80

See also ULPs #5-75, #15-76, #37-76, #19-77, #12-78, and #29-82.

72.316: Discrimination Related to Union Membership or Concerted Activity - Criteria for Determining Violation - Seniority

The Ravalli County Road and Bridge Department contended that their motivation for discharging the eleven union member employees “was purely economic, and that these particular individuals were selected for discharge because they were less efficient than others with lower seniority in the same category who were retained in [their] employ.” The Department violated Section 59-1605(1)(a) and (c) by discharging five of the employees for their “involvement in union organizational activity” but they “were exercising their prerogatives to operate and manage their affairs as recognized by Section 59-1603” when they discharged the six other employees. ULP #4-73

“Mr. Young was laid off and Mr. Spilde retained by the City because Young had filed a number of grievances.... Young was laid off, Spilde remained (with less seniority as a laborer) and did laborer work, the supervisor stated publicly that he would not rehire complainant, the City had CETA employees doing laborer work, and Young has not yet been recalled.” ULP #3-79 Montana Supreme Court (1982)

72.317: Discrimination Related to Union Membership or Concerted Activity - Criteria for Determining Violation - Timing of Adverse Action

The discharge of a union steward a month after he had filed five employee grievances is evidence of discriminating for union activity. ULP #5-75

See also ULPs #5-73, #15-76, and #19-77.

72.318: Discrimination Related to Union Membership or Concerted Activity - Criteria for Determining Violation - Treatment of Similarly Situated Employees

Withholding a salary increment from a teacher while others received increases is not necessarily evidence of discriminatory treatment because of union activities. However, failure to warn an employee of mistakes prior to discharging the employee, when all other employees are given such warning is evidence of such discrimination. ULP #8-75

“Employer discrimination consists of treating like classes differently.” ULP #16-78

See also ULPs #5-75, #41-76, #19-77, and #34-82.

72.319: Discrimination Related to Union Membership or Concerted Activity - Criteria for Determining Violation - Other

“It is not clear from the language of the policy that a teacher must obtain approval of the District before accepting office. If such were the case, it would amount to interference. *Hydro-Dredge Accessory Co.*, 215 NLRB 5, 87 LRRM 1557 (1974).... There is sufficient ambiguity in the language of the policy to render it meaningless....” Therefore, there was no violation of Section 401 (1) or (2). ULP #19-80

See also ULPs #19-77 and #3-79, District Court (1981) and Montana Supreme Court (1982).

72.323: Discrimination Related to Union Membership or Concerted Activity - Basis of Discrimination - Participation in Protected Concerted Activities [See also 21, 61.2, 62.2, 63.1, 64.2, 72.311, and 72.312.]

“There is no doubt that the pressure was on from the parents to get rid of Ms. Widenhofer, and again there is no doubt that the drive to get rid of Ms. Widenhofer was a result of her strike activity.... Although it is not contrary to Chapter 16, Title 59 for parents to discriminate on the basis of union activity, it does become an unfair labor practice if the school administration joins in.” ULP #28-76

See also ULPs #19-77, #19-80, #23-80, #10-81, #38-81, #29-82, and #34-82.

72.324: Discrimination Related to Union Membership or Concerted Activity - Basis of Discrimination - Participation in Union Activities [See also 21.]

“Ms. Karen Jolly was harassed by her supervisor, Mr. Tom Stockstill, because she had filed a grievance with her union.” ULP #37-76

“No threats of reprisal, implied or expressed, were made because they pursued the contract grievance procedure. The teachers who filed the grievance were treated no differently than those who did not so file. There were no actions against their protected rights even if one concluded that the School District specifically responded to the filing of the grievance by changing the recess policy. The District had ample reason to desire the change; the arbitrator’s award gave rise to the opportunity to effectuate that change.” ULP #39-81

“It is a violation of the Collective Bargaining for Public Employees Act for an employer to discharge or otherwise discipline an employee based upon the employee’s union activity. This Board has consistently held that an unfair labor practice consists of a discharge or other adverse action that is based in whole or in part on an employee’s engagement in protected conduct.” ULP #15-83

See also ULPs #3-73, #4-73, #5-73, #15-74, #5-75, #28-76, #19-77, #12-78, #3-79, #42-79, #10-80, #15-80, and #23-80.

72.331: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Assignment Practices

The absence of specific contract language indicating work assignment invalidates a charge of discrimination for union activities by reason of work assignment. ULP #3-75

An employer is not obligated to assign work to a given individual if it was not intended for him by the contract. ULP #3-75

The School District must be barred from ever using active union membership as a consideration for teacher assignments. ULP #16-75

See also ULPs #37-76 and #41-76.

72.332: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Constructive Discharge

See ULPs #19-77 and #18-78.

72.333: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Demotion

The demotion of an employee from foreman to regular heavy equipment operator after he took part in union activity prior to unit determination was found to be an unfair labor practice. ULP #3-73 District Court (1975)

“The removal of Ms. Howe’s head teacher duties was in effect a demotion even though her salary was not reduced.” ULP #29-82

72.334: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Discharge

“The services of a nontenured school teacher may be terminated without cause, as long as the termination is not because of an impermissible reason.... Since no reason need be given for dismissing a nontenured teacher such as Ms. Widenhofer, the present case presents a dual motivation problem.” ULP #28-76 Montana Supreme Court (1979)

See also ULPs #4-73, #5-73, #19-77, #12-78, #3-79, and #10-80 and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

72.335: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Discipline [See also 47.311.]

According to the Weingarten rule, “employee insistence upon union representation at an employer’s investigatory interview, which the employee reasonably believes might result in disciplinary action against him, is protected concerted activity.” ULP #16-81

The Hearing Examiner found that the purpose of the meeting with Ms. Blackman “was much broader than a simple follow-up of the February evaluation ... [and that] any employee receiving these letters would fear that the requested interview might result in disciplinary action.” Applying the Weingarten rule, she determined that the Employer was in violation of Section 401(1). ULP #16-81.

“I found no evidence that indicated Complainant’s union activity influenced in any way the Defendant’s actions of demotion, reprimand or non-hiring. The record does not indicate that the Defendant pressured the Complainant into termination.” ULP #38-80

“The Billings Education Association alleges that the employer refused to permit a union representative at the March 9 meeting with management which Mr. Jones reasonably believed might result in discipline.” This was not a violation of Section 39-31-401(1) MCA because he, himself, did not request union representation.” ULP #5-84

See also ULPs #37-76, #41-76, and #42-79.

72.336: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Layoff

“[T]he evidence on the record fails to sustain Slim Campbell’s charge that he was laid-off because he was exercising his rights under Section 39-31-201 MCA.” ULP #2-85

See also ULPs #1-76 and #3-79.

72.337: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Permanent Layoff

"This recision of the termination of Mr. Gornick and Mrs. Vanderburg, combined with the lack of any substantial ... evidence, directs me to the opinion that the trustees did not violate the law within the meaning of Section 59-1604." ULP #8-77

See also ULPs #29-79 and #30-80.

72.340: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Scheduling Changes

The Hearing Examiner did not "find that the City either negotiated with individual employees or changed the work shift unilaterally." ULP #27-77

See also ULPs #5-73, #15-80, and #38-81.

72.341: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Suspension

See ULP #42-79.

72.342: Discrimination Related to Union Membership or Concerted Activity - Forms of Discrimination - Other

Giving monetary benefits to non-strikers when they are not "on-call" is discriminatory conduct. ULP #34-82

72.35: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charges of Discrimination [See also 43.9, 71.512, 72.31, and 72.32.]

"Respondent City argues that a satisfactory performance rating does not erase prior disciplinary actions.... The District Court's position on this issue was correct and the Hearing Officer should have included evidence of events occurring prior to Carlson's merit increase." ULP #10-80 Montana Supreme Court (1982)

"To the extent that it is possible to summarize the standards which may be extracted from the Section 8(a)(1) and 8(a)(3) [NLRA] cases which have been cited in counsels' briefs and noted above, one could say that where the effect of the employer's action upon Section 7 [NLRA] rights is significant, motive is irrelevant. In that type of case the establishing of a legitimate business justification is of no avail. Where the effect is minor, however, the action will be deemed to be justified when significant and legitimate interests of the employer are shown." ULP #34-82

See also ULP #4-73.

72.351: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charge of Discrimination - Attendance

"The District did not violate ... [Section] 401 ... by adopting a policy advising the Association to obtain its approval for time off from work to participate in professional activities." ULP #19-80

"The Complainant developed a poor job performance record which caused his demotion, reprimand and subsequent rejection of re-employment with the Defendant." ULP #38-80

"Payment for the one day they [the non-striking teachers] actually reported for work, June 4th, is not in dispute. When Defendant closed the schools, the school year ended; there was no work to be done nor a need for standby teachers." ULP #34-82

72.3521: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charge of Discrimination - Changes in Operation - Subcontracting or Contracting Out

Subcontracting by the employer which meets the tests set forth by the National Labor Relations Board (NLRB) in the Westinghouse case (150 NLRB 1574, 58 LRRM 1251 [1965]) is a defense against an unfair labor practice charge. ULPs #3-75 and #4-76

In *Fibreboard Paper Products Corp. vs. NLRB*, “[t]he U.S. Supreme Court held that an employer violated Section 8(a)(5) of the NLRA (39-31-401(5) MCA) by unilaterally deciding to subcontract its maintenance work and terminate its own employees.... The Court upheld an NLRB finding that although the company’s motive in subcontracting its work was economic, the failure to negotiate with the union over its decision to subcontract constituted a violation of the NLRA ... the same reasoning and theory [as in *Fibreboard*] should be used in this case.” ULP #30-80

“Contrary to what popular public employer opinion might be, the Collective Bargaining for Public Employees Act was passed for public employees, not employers. Those management rights listed under 39-31-303 MCA were not intended to be used by public employers as a shelter under which the duty to bargain collectively should be avoided.” ULP #30-80

See also ULP #18-78.

72.355: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charge of Discrimination - Discourtesy to Public

See ULP #10-80.

72.358: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charge of Discrimination - Economic Reasons

Budgetary constraints of the employer are a defense against a charge that lay-offs were the result of discrimination. Poor management practices exacerbated the situation, but did not constitute an unfair labor practice. ULP #1-76

“[T]he change in policy was warranted by a business justification. (I agree with that contention.) The evidence shows that the postponing of vacations was related to a desire by the State to get unemployment checks out on time.” ULP #47-79

“That the School District was faced with the prospect of losing \$1.275 million in state aid clearly explains its attempt to open the schools; however, it does not justify disparate treatment toward strikers once it decided to close the schools.” ULP #34-82

“The Lockwood School District was motivated by the financial savings. It met the ‘purpose or intention’ restriction of the collective bargaining agreement, Article 2--Subcontracting.” ULP #9-83

“The County successfully proved that budget considerations caused all the lay-offs in the winter of 1984-85.” ULP #2-85

See also ULPs #1-74, #18-78, and #39-81.

72.359: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charges of Discrimination - Efficiency of Operation

“[I]f the conclusion were drawn, in spite of the facts on the record, that there was an adverse effect on the teachers’ rights, the employer sustained its burden and established a legitimate and substantial business justification for its action. The District’s long standing concern with greater safety during recess, coupled with the teachers’ availability serve to enforce such determination.” ULP #39-81

See also ULPs #18-78, #19-80, and #2-85.

72.360: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charge of Discrimination - Incompetence

The School Board's insistence that not giving a salary increment was based upon the incompetence of the teacher was held to be valid despite the poor evaluation system used to determine competency. ULP #8-75

"An unsatisfactory employee cannot place himself in a better position because of protected union activities. (Mt. Healthy City School District Board of Education vs. Doyle, 429 U.S. 274, 287 [1977])." ULP #12-78

"[T]he decision to not renew Mr. Carlisle's contract was made primarily on the recommendation of Mrs. Fisher and not because of Mr. Carlisle's union activity." ULP #12-78

72.361: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charge of Discrimination - Insubordination

See ULPs #42-79 and #10-80.

72.362: Discrimination Related to Union Membership or Concerted Activity - Defenses Against Charge of Discrimination - Lack of Knowledge of Union Activity

"In the instant case, the trustees had the sole authority to hire and fire teachers.... We hold that the appellants have committed an unfair labor practice despite the trustees' lack of knowledge of Ms. Widenhofer's union activities.... Under the usual employer-employee relationship, there cannot be discrimination unless the employer knows of the protected activity. However ... we are not dealing with a usual employee-employer relationship.... [T]heir decision not to hire in this case was based on a tainted evaluation.... An anti-union act was committed when Mr. Croff presented the tainted evaluation to the trustees. The trustees are responsible for this action by Mr. Croff." ULP #28-76 Montana Supreme Court (1979)

See also ULPs #28-76 and #38-80.

72.366: Discrimination Related to Union Membership or Concerted Activities - Defenses Against Charges of Discrimination - Other

"To the suggestion that the employer would have been perpetrating a fraud upon the twenty teachers if it had not paid them for eighteen days, suffice it to say that, unlike the facts in *Portland Willamette*, ... Defendant was under no apparent obligation to pay them beyond 'the completion of the school year.' The school year ended when the trustees closed the schools." ULP #34-82

72.4: Discrimination for Recourse to Board of Personnel Appeals or Court [See also 73.114.]

Section 39-31-401(4) MCA "prohibits employer discrimination against an employee for signing or filing an affidavit, petition or complaint or giving information, or testifying under the Act." ULP #3-79

"Filing a grievance under the terms of a contract grievance procedure does not equate to signing or filing an affidavit, petition, or complaint under the act.... However, Mr. Young was discriminated against (for grieving a number of employer personnel actions) when he was laid off and a person with less seniority kept on doing laborer work. And ... he was further discriminated against after he filed this unfair labor practice charge because he was not called back by the city." ULP #3-79

"Despite the inherent danger of coercion the National Labor Relations Board permits a limited privilege in the investigation of facts concerning issues raised in [an unfair labor practice] complaint. *Johnnie's Poultry Co.*, 146 NLRB 770, 55 LRRM 1403 (1964), 59 LRRM 2117 (CA8, 1965)." There was no evidence "to show that the employer did not comply with the safeguards identified by the NLRB in *Johnnie's Poultry*.... [There was nothing] to show

that the employer's attorney went beyond the necessities of preparing his case for hearing; that he inquired into matters of union membership; that he discussed union activities; that he dissuaded employees from joining or remaining as members of the union; or that he otherwise interfered with their rights." ULP #23-80

In *NLRB vs. Scrivener* (405 U.S. 117, 79 LRRM 2587 [1972]), the U.S. Supreme Court ruled "that an employer's discharge of employees who gave written statements to an NLRB investigator, but who had not filed a charge or testified at a formal hearing, constituted a violation of the Act." ULP #10-81

"It takes more than [Mr. Waltermire's] belief, however, to prove that the School District discriminated against him because he filed a petition with this Board and was attempting to organize substitute [teachers].... [T]he School District did nothing to thwart his organization efforts nor did it reduce the number of times he was called because he filed a petition here." ULP #10-81

"Principal Garrett issued his April 24 memorandum the day before the summons in ULP #16-81 was received.... Therefore, it is impossible to believe that his memo ... was issued in retaliation for the Association filing the charge in ULP #16-81." ULP #20-81

"Slim Campbell's [unfair labor practice] charge was filed shortly after he was laid-off... and we cannot extrapolate it to cover his call-back to employment even though it is clear that [the County Road Boss] did not call Campbell back to work as soon as other employees because of the charge he had filed with this Board. This is clearly a violation of 39-31-401(4) and had the charge been made we would have found in Campbell's favor." ULP #2-85

See also ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

72.5: Refusal to Bargain in Good Faith [See also 41.63.]

"Because of the complexity of the issues involved herein and because of the ambiguity of the contract, I do not expressly find the City to be in bad faith for refusing to bargain with the Union." ULP #14-74

"If the Board of Personnel Appeals were to judge the sincerity of a proposal it could be forcing one or both parties to make a concession. The Board of Personnel Appeals can only judge if a proposal was made in a good faith intent to reach an agreement." ULP #20-78

"[T]he obligation to bargain collectively in good faith does not compel either party to agree to a proposal or require the making of a concession." ULP #5-82

See also ULPs #2-73, #13-76, #13-78, #11-79, and #19-79.

72.51: Refusal to Bargain in Good Faith - Continuous Duty to Negotiate

"The City's refusal to grant Dyer a grievance hearing is then, in effect, a refusal by the City to bargain over conditions of employment ... and questions arising under the present collective bargaining contract.... By refusing, and continuing to refuse to bargain collectively with the Union through the use of the contractual grievance procedure, the City ... did engage and is engaging in an unfair labor practice within the meaning of Section 59-1605(1)(a)...." ULP #2-75

The part-time nature of a small city government and the press of other city and personal business is no defense against a charge of excessive delay in the conduct of bargaining sessions. However, the Board of Personnel Appeals does not require parties to engage in negotiations which could not, by any reasonable standard, prove fruitful at that time. ULP #6-76

"The Supreme Court has held that 'Collective bargaining is a continuing process. Among other things it involves ... protection of employee rights already secured by contract.' *Conley v. Gibson*, 355 U.S. 41, 2 L Ed 2d 80, 85, 78 S.Ct. 99 (1957)." ULP #2-75 Montana Supreme Court (1977)

"Under Montana's Collective Bargaining Act for Public Employees a failure to hold a grievance hearing as provided in the contract is an unfair labor practice for failure to bargain in good faith." ULP #2-75 Montana Supreme Court (1977)

"I can find no duty on the part of the employer to negotiate on one section of a contract outside the formal negotiating sessions exclusive of the other issues of the contract." ULP #7-78

The School District's refusal to arbitrate the nonrenewal of nontenured teachers "amounted to a failure to bargain in good faith and constituted an unfair labor practice." ULP #30-79 Montana Supreme Court (1982)

"[A] contract violation is not a per se unfair labor practice. However ... this matter [refusing to strike names on the arbitration list] ... rendered ineffective their contractually agreed upon dispute resolving mechanism. This board has consistently ruled that such action constitutes a failure to participate in the ongoing process of collective bargaining and therefore the unfair labor practice of refusing to bargain in good faith." ULP #5-80

See also ULPs #11-75, #25-76, #16-78, #17-78, #18-78, #23-78, #3-79, #11-79, #30-79, #31-79, and #7-80.

72.511: Refusal to Bargain in Good Faith - Continuous Duty to Negotiate - Subjects Not Covered by Agreement

"The Complainant ... alleges ... that the Employer refused to negotiate a supplemental agreement to the already existing supplement contract between the two parties and further that this refusal was in violation of Section 59-1605(1)(e), RCM, 1947.... Critical and central to this case are the words of the Supreme Court, 'collective bargaining is a continuing process.... [T]his process may involve among other things, day to day adjustments in the contract and working rules, resolution of problems not covered by existing agreements, and protection of rights already secured by contract.' ... These static qualities are the negotiated contracts. They should be regarded as the 'framework' within which the process of collective bargaining may be carried on. Yet ... [they] are themselves susceptible to change." ULP #13-74

"[T]he duty to bargain during the term of the agreement has generally been limited to subjects which were neither discussed nor incorporated into the contract.... The contract ... contains a seniority clause.... I cannot find any obligation by the city to bargain on the subject.... But ... the problem is one of enforcement of contractual and statutory rights. Therefore, I must conclude that there was no refusal to bargain because there was no obligation to bargain on the subject." ULP #3-79

"[T]he refusal of the State to make the first move would not necessarily evidence bad faith.... No where ... do I find any requirement that participants to collective bargaining must act like those around a bridge table or a poker table and follow a preordained course of bidding or betting.... [The] record reflects hard bargaining.... The Union's charge on this issue is dismissed." ULP #11-79

In *NLRB vs. Herman Sausage Co.* (275 F.2d 229, 45 LRRM 2829, 1960) the 5th Circuit Court of Appeals said: 'The heart of this type of case ... is the fact question of good faith.... [M]ake certain that the record actually and substantially supports the charge...'" ULP #30-81

See also ULPs #6-77, #43-79, #16-81, and #33-81 and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

72.530: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Authority of Representative [See also 09.11, 11.31, and 41.22.]

The State Department of Highways did not engage in bad faith bargaining by insisting that the concurrence of the Highway Commission was necessary to ratify any agreement negotiated by the Director of the Department of Highways. ULP #3-74

Even though some employees are under a new employer, the failure to notify the union of a change is bad faith bargaining and therefore the new employer is bound by the contract. ULP #18-75

“[T]he Board’s negotiators were not empowered to carry on negotiations but merely to act as conduits of information to the Board. They had no power to make offers nor to grant concessions.... The Board did authorize its negotiators, that is they were the official negotiators for the Board; the Board did not however clarify what functions the team was authorized to perform nor which powers the team was authorized to exercise.... Numerous National Labor Relations Board decisions relating to the duty of negotiators make clear the responsibility of a negotiating team to be empowered to make meaningful negotiations.” ULP #14-76

“The chief executive of Butte-Silver Bow is the proper bargaining representative for the public employer of Butte-Silver Bow employees.” ULP #17-77

“Lack of authority on the part of the management negotiator is not considered a per se violation.... In this case, the state negotiator’s questionable authority combined with the facts surrounding the unilateral imposition of the matrix on the teachers leads to the conclusion that the State of Montana bargained in bad faith with the teachers at Pine Hills and Mountain View schools.” ULP #33-81

“The Sheriff of Butte-Silver Bow is the designated authorized representative of the employer pursuant to 39-31-301 MCA.” ULP #45-81

See also ULP #33-76.

72.531: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Evasive Tactics and Delay

The refusal to continue negotiations because one or both parties may have filed an unfair labor practice charge is a delaying tactic, which is grounds in itself for an unfair labor practice charge. ULP #4-76

“Even though Defendant officials, in raising the issues allegedly precluding their duty to bargain at this time, may not have explicitly refused to bargain with this union there have been delays and such delays were not adequately defended by the evidence in the hearing. Such delay, therefore, amounts to a constructive refusal to bargain....” ULP #17-77

“With the School District making a contract proposal some nine days after the union made their first contract proposal ... I find the School District was neither dilatory nor evasive in its dealings with the union.” ULP #30-81

See also ULPs #25-76 and #11-79.

72.532: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Failure to Make Counterproposals

“Not moving from a bargaining position, in itself, is not an unfair labor practice.... In the instant case and within the time frame dictated, there is no evidence that the City expressed the desire not to seek an agreement. The City did adamantly retain its position on the \$45 [wage] offer.... [However, the City] has not violated Section 59-1605(1)(3) RCM 1947.” ULP #27-77

See also ULPs #17-77 and #11-79.

72.533: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Imposing Conditions

Demanding that one member of the union take a pay cut as a condition for continued negotiations is an unfair labor practice. ULP #17-75

Demanding *written* proposals in negotiations is imposing a condition to bargaining which constitutes an unfair labor practice. ULP #4-76

An employer cannot refuse to bargain on staff evaluation procedures even though such have not been included in previous agreements. ULP #16-75

“When Defendant was asked to bargain on the change made, it agreed to sit down and negotiate, but only if Complainant agreed not to engage in concerted activities.... Defendant’s imposition of conditions on bargaining was improper and indicated bad faith....” ULP #17-78

“The School District did violate Section 39-31-401(5) MCA by insisting the Bigfork Area Education Association first submit a proposal to the School District; if the proposal appeared sincere to the School District or if the negotiations looked profitable to the School District, then the School District would consider a meeting.” ULP #20-78

“The ultimate question of whether the State’s insistence on the stipulation [of ‘no strike’ during factfinding] as a condition to factfinding amounted to bad faith is a subjective call and involves ‘finding of motive or state of mind which can only be inferred from circumstantial evidence.’ (See [NLRB vs. Thompson, Inc.]) ... I am not persuaded that the demand for stipulation was for the purpose of frustrating the ultimate agreement.... [T]he charge, although extremely close, has not been proven by a preponderance of the evidence....” Therefore, this charge was dismissed. ULP #11-79

“[T]he hearing examiner did not find that either the language of Defendants’ March 1, 1982, letter [which allegedly made an ‘ultimatum proposal’] or Defendants’ presentation of that letter as a proposal at the March 15, 1982, bargaining session could be found violative of Sections 39-31-401(1) and (5) MCA.” ULP #5-82

See also ULP #23-78.

72.534: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Inconsistency of Position

“I find no evidence that the School District made any switch in any positions.... I also find that the School District never made any commitment to negotiate from the January 1981-June 1981 base when the parties were negotiating the first contract or negotiating a renewal contract. Therefore the School District never switched negotiation bases.” ULP #30-81

“The School District admits paying some employees by a different formula than the clerical union members.... [T]his hearing examiner is unable to find any authority or case law which states that one employer has to pay all groups of employees, union and non-union, by the same pay rate formula. I find no violation of the Collective Bargaining Act.” ULP #30-81

See also ULP #31-82.

72.535: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Reasonableness, Legality and Sufficiency of Proposals

The “Governor’s bargaining agent placed an ‘arbitrary limitation of a 14 percent increase...’” The Hearing Examiner was “not persuaded that such a statement was an unfair labor practice.” ULP #11-79

“[T]he NLRB found that Deena Artware, Inc., 86 NLRB no. 124, 24 LRRM 1675, 1949, violated [the Act] ... by making an insufficient counter-proposal.... Using the above case as a yardstick ... I believe the school district’s offer contains sufficient information to adequately judge its value.” ULP #30-81

See also ULP #33-76.

72.536: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Right to Reject Proposals

See ULP #11-79.

72.537: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Time and Place of Meeting

An employer *cannot* claim that the initiation of time and place determinations for negotiations is the duty of the union. It is a mutual obligation. ULP #6-76

“When a meeting was cancelled it was announced at the Board meeting and it was assumed an Association member would relay the news to the Association’s negotiators. The Board’s handling of this matter shows an alarmingly uncooperative attitude.” ULP #14-76

“I find that an authorized representative of the City (Mr. Grainger) was available and willing to meet [at reasonable times, dates and places] with representatives of the Kalispell Police Protective Association.... [Therefore, the City] has not violated Sections 59-1605(1)(e) and (3) RCM 1947.” ULP #27-77

“[T]he fact situation in this matter did not establish that Defendants’ setting of the 1982-83 mill levy request was intended to, could reasonably have been interpreted as an effort to, or did in fact impinge upon Complainant’s collective bargaining rights.” ULP #5-82

72.538: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Totality of Conduct

Totality of conduct was established by examining employer conduct with regard to scope of unit plus wages, and bad faith bargaining was found to exist. ULP #4-76

“‘The duty to bargain in good faith is an “obligation ... to participate actively in the deliberation....” Except in the cases where the conduct fails to meet the minimum obligation imposed by law or constitutes an outright refusal to bargain, all the relevant facts of a case are studied in determining whether the employer or the union is bargaining in good or bad faith, i.e., the “totality of conduct” is the standard, through which the “quality” of negotiations is tested’.” ULP #33-81

“The facts in this case are subject to analysis either under the per se violation standard [because a mandatory subject of bargaining must be bargained] or under the good faith/bad faith bargaining/totality of conduct standard.” ULP #33-81

“[W]e find that the employer said that the county was short of money; that the union, among other things, asked about management belt tightening; that the county, among other things, stated that Greg Jackson would not get a raise; and that Greg Jackson did get a raise.... There is no question that the employer did provide information to the union in response to the union’s questions. The question is about the honesty of the county information concerning future events.” The question involves the issue of misrepresentation and concealment of facts at the collective bargaining table. “[T]his hearing examiner understands that it is an unfair labor practice for an employer to *knowingly* misrepresent any facts about a mandatory subject of bargaining.

The employer also has an obligation to correct any facts about a mandatory subject of bargaining which the employer later finds incorrect.... Because the statement in question is about *future intentions* of the employer not to increase the pay of a *non-bargaining unit employee*, because I find no guidance in the NLRB and/or other state case law, because the effect of this case would best be served by the dismissal of the charge, and because I cannot base this case on the 'totality of conduct' I believe this charge should be dismissed." ULP #31-82

See also ULPs #20-76, #19-77, #20-78, #11-79, #30-81, and #18-82.

72.539: Refusal to Bargain in Good Faith - Withdrawal of Proposals

"In the absence of an agreement as to the form in which a contract offer must be made during collective bargaining negotiations between these two parties, it must be assumed that a bona fide offer may be in any generally understood oral or written form, either in person, through agents, or oral or through a mediator or other third party.... Mr. D'Hooze's letter ... did, in fact, represent a valid contract offer from the Commissioners ... [and its] withdrawal ... after it was accepted by the bargaining unit represents an unfair labor practice...." ULP #10-79

"It is the finding of the Examiner, by a preponderance of evidence that the State did in fact characterize the offer as a 'last, best and final offer' and it is admitted that the State coupled this characterization with the suggestion to the Mediator that the State reserve its right to revert to a lower offer if the offer was not accepted if the Union went on strike.... There is, however, no evidence that the State did in fact revert to a former offer.... [T]hat does not establish that such conduct is an unfair labor practice. The federal case law cited by the State is most persuasive that either party may retract an offer not accepted and revert to a lower offer without being guilty of bad faith bargaining...." Therefore, the charge was dismissed. ULP #11-79

"[T]he informal, away from the collective bargaining table discussions have no effect on negotiations until they are formally presented at the collective bargaining table." ULP #42-81

"[D]id the City have good cause to withdraw from the tentative agreement of August 17, 1981? ... To this hearing examiner, good cause would have to be a matter which is not in the control of one or more of the parties.... In this case, we have cause being the over-sight in the change in language plus an assessment ... that no change is needed in the collective bargaining agreement to withhold insurance premiums from the employees' checks. I do not believe this is good cause because the over-sight and the assessments are within the full control of the City." ULP #42-81

See also ULPs #25-76, #33-76, #27-77, #13-80, and #30-81.

72.54: Refusal to Bargain in Good Faith - Insistence to Impasse on Non-Mandatory Subject [See also 42.2, 42.3, 51, 53.11, 55.92, and 73.45.]

A "gray area" of issues between management and employees makes it impossible, in this case, to say that any non-mandatory subjects were bargained to impasse. ULP #11-75

"[A] party may not insist to impasse on the incorporation of a permissive subject of bargaining into the collective bargaining contract, NLRB vs. Wooster Division of Borg-Warner (1958) 356 U.S. 342, 42 LRRM 2034." ULP #20-78

"[T]he City's insistence upon bargaining on the recognition clause, in the face of the Union's refusal, is a per se violation of Section 59-1605(1)(e) RCM 1947 and ... its good faith with respect to attempting to reach agreement must be disregarded. The City's insistence upon bargaining on a permissive subject is, in substance, a refusal to bargain about mandatory subject." ULP #19-78

“[T]he parties were not involved in endless marathon discussions nor were they at impasse.” ULP #33-81

“The Employer did not insist to impasse on bargaining over a permissible or non-mandatory subject.” ULP #45-81

72.55: Refusal to Bargain in Good Faith - Direct Communications with Employees [See also 41.31, 72.131, 72.151, and 72.17]

“The negotiation of a master agreement was not a condition precedent to the issuance of individual teacher contracts, and if there had been a good faith effort to reach agreement, injunction would not lie to prevent school board from issuing individual teacher contracts.” *Billings Education Association v. District Court* (1974)

Attaching a contingency (time limitation) to a proposal shown to individual union members which does not allow the Union to effectively respond and thus forces the employees to act individually in order to take advantage of the offer is deemed an unfair labor practice. ULP #11-75

“[T]he intention of the Legislature was not to allow the substitution of individual contracts for that of the master agreement.... [T]he function of the individual contract has been relegated to nothing more than a document stating the intention of the teachers to teach in the public school system for the academic year.... The master contract deals with wages, hours, and other conditions of employment; the individual contract deals only with the individual teacher's intent to return to the district and teach for the upcoming year.” ULP #17-75

“[T]he challenged section of the Final Order of the Board of Personnel Appeals [regarding the issuance of individualized contracts] is not in violation of constitutional and statutory provisions, is not in excess of the statutory authority of the Board, was not made upon unlawful procedure, is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and is not arbitrary, capricious, characterized by abuse of discretion or clearly unwarranted exercise of discretion.” ULP #17-75 *District Court* (1978)

“In *State ex rel. Billings Education Association v. District Court* (1974), 166 Mont. 1, 531 P.2d 685, this Court held that nothing in the Professional Negotiations Act for Teachers ... required District No. 2 to adopt a master agreement with BEA before issuing individual teacher contracts.... It is not relevant to the present dispute.” ULP #17-75 *Montana Supreme Court* (1979)

“Mr. Reagan ... has refused to bargain on the grounds that the individual contracts with the teachers are binding and sufficient and that the newly certified representative, the Victor Federation of Teachers, must honor these contracts signed prior to the Victor Federation of Teachers' certification.” ULP #20-76

“By issuing individual contracts containing normal items of collective bargaining, the School Board, in this case, did violate the guidelines of J.I. Case and ULP #17-75.... If the individual contract was only a legal formality to hire, I could not sustain the charge. However ... a binding contract containing wages with no reference to a master agreement or a rider until a master agreement is reached” violates the guidelines. ULP #25-76

“In determining whether or not the discussion between Mr. Fisher and Ms. Vanderburg constituted an unfair labor practice, the following factors were considered: (1) The incident was precipitated totally by happenstance; it was in no way a planned, prepared for, or formal discussion. (2) The incident was, as far as the record indicates, totally isolated, neither recurring with this employee nor happening at any time to any other employee; thereby disallow-

ing any allegation of a continuous, concerted activity of the School Board. (3) The incident was trivial in nature, particular details of the occurrence not being remembered by any of the participants.” ULP #33-76

“Individual contracts not used for coercive purposes which are consistent with and subservient to the terms of the collective bargaining agreement are permitted. Individual contracts which continue the status quo and do not contain unilateral changes in regards to terms and conditions of employment which are subjects of collective bargaining are permitted.” ULP #16-78

“An employer’s free speech right to communicate his views to his employees is firmly established and cannot be infringed upon by the Board [of Personnel Appeals].” ULP #16-78

“I find that AAUP did not waive its right to bargain retirement benefits and that Eastern Montana College’s agreements with Mr. Thompson and Mr. Miller contained a provision inconsistent with an existing collective bargaining agreement. Therefore, I find that EMC did violate RCM 59-1605(1)(e) in negotiating the retirement agreements with Mr. Thompson and Mr. Miller.” ULP #16-78

“With the parties agreeing the teachers were already employed, with the wages in the individual teaching contracts not being governed by the master labor agreement, with the issuances of the individual teaching contracts having the effect of telling the teachers they may do as they wished but the School District would determine the work conditions, I find the School District interfered with the collective bargaining process.” ULP #20-78

“[T]he second full and final offer ... was mailed to the individual teachers on or about July 10, 1978 ... [and it contained] language different from earlier offers.” However, “the School District did not submit provisions to the individual teachers which had not first been submitted to the Complainant at the bargaining table. Therefore, the School District did not violate Section 39-31-401(5) MCA.” ULP #20-78

“The ‘individual contracts’ issued by [the Employer] ... surpassed the limits of a proper ‘teachers’ individual contract’ by incorporating wages and hours--two elements strictly reserved for collective bargaining.” ULP #23-78

“We do not find ... [that the letter mailed to each Union member by the Employer contains] the statement of the ‘employer’s philosophy’ but rather, as alleged by the State, comparison of the offers.... The Examiner finds that the letter sent by the State to each Union member was not an unfair labor practice....” ULP #11-79

“The Defendant violated Sections 39-31-401(1) and (5) MCA by calling and conducting meetings with the nurses’ aides for the purpose of discussing wages, hours, and other terms and conditions of employment, thereby bypassing the exclusive bargaining agent.” ULP #29-79

“[A]n employer could not unilaterally negotiate terms different from those in the collective bargaining contract with prospective or newly hired employees.” ULP #7-80

“In this present matter, the District entered into individual contracts with three teachers which reflect a salary less than that stated in the collective bargaining agreement.” ULP #34-80

“It is well settled that an employer cannot ignore the recognized collective bargaining agent and negotiate individually with employees on matters inconsistent with the existing collective bargaining agreement. The U.S. Supreme Court held in *J.I. Case Co. vs. NLRB*, 321 U.S. 332 (1944) 14 LRRM 501, that such individual bargaining was in violation of the LMRA, Section 8(a)(5), analagous to Section 39-31-401(5) MCA.” ULP #34-80 See also ULPs #20-78 and #23-78.

The charge referred to a meeting between Linda Keeler and Russell Carlson on July 16, 1981. "Because Linda Keeler is part of the Union negotiating committee, because of the time factor with the upcoming Union meeting, because there is no fact that the School District was trying to leave the impression that the employees would be better off without the Union, I find no violation of Montana's Collective Bargaining Act." ULP #30-81

"Regarding the question of whether the Employer committed a violation of 39-31-401, MCA, when it set and paid Douglass' salary, not only do I find that there is no evidence to show such a violation, it appears the Employer is paying him less (when his salary is converted to an academic year equivalent) than it pays an assistant professor without a doctorate." ULP #2-82

"The parties were engaged in negotiations over the market adjustment factor [MAF] when the employer finally set Spector's salary at an amount which included the MAF.... Defendants violated 39-31-401(5), MCA when they unilaterally granted the MAF to Professor Spector." ULP #2-82

"When an employer recognizes another labor organization as exclusive representative and signs an agreement with that organization it is tantamount to a direct refusal to bargain with the exclusive representative and is clearly bad faith vis à vis the incumbent (certified) union.... It should be noted that in Medo [Photo Supply v. NLRB (1944)] the employer was found in violation of both Section 8(1) and 8(5) of the NLRA: interference with employees in the exercise of their rights guaranteed under the act and refusal to bargain. In this case, AFSCME charged the City with failure to bargain in good faith (Section 39-31-401(5)) and failed to charge a violation of Section 39-31-401(1) MCA." ULP #34-84

See also ULP #30-80.

72.56: Refusal to Bargain in Good Faith - Direct Communication to Legislative Body - End-Run Bargaining [See also 41.31.]

"In bargaining sessions held after the executive order was issued the state's negotiator stated that wages were set by the executive order [which the Chief of the Labor Relations Bureau had helped draft]. The state appears to have unilaterally imposed it on the teachers who were attempting to bargain." ULP #33-81

72.571: Refusal to Bargain in Good Faith - Failure to Ratify - Refusal to Reduce to Writing

"[T]he key phrase in both [Section 39-31-305(2) and 39-31-306(1) MCA] is '...any agreement reached.' In other words, on any agreement reached the parties are required to put it in writing and sign it.... Here the parties had not agreed.... [T]hey did not have a mutual understanding.... Unfortunately, their respective understandings were not congruent." ULP #13-80

72.572: Refusal to Bargain in Good Faith - Failure to Ratify - Refusal to Execute

"[T]he School Board violated its understanding with the Association by unilaterally changing the March 12, 1976, agreement and submitting an altered document for legal advice.... Had the March 12, 1976 agreement been deemed legal, it should have been executed." Therefore, the School Board violated Section "1605(3) by refusing to execute a written contract incorporating [the] agreement reached." ULP #16-76

"[T]he proposal during bargaining [listing the salary schedule for all 16 teachers] was merely to illustrate how current staff would be affected by the Board proposal and was not a commitment to retain specific programs or staff members.... There is no evidence that listing teachers on the proposal was more than informational. The charge is not proven." ULP #16-81

“Using the NLRA for guidance, it is a violation of Montana’s Collective Bargaining Act, Section 39-31-401(5) MCA for an employer to refuse to execute a completed collective bargaining contract.” ULP #42-81

See also ULP #29-80.

72.581: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Budget Approval [See also 42.43, 53.512, and 55.711.]

The Hearing Examiner “found that the Alteration of Master Contract of May 12, 1980, is reflective of the negotiated settlement.... The District was correct in maintaining that the negotiated settlement was contingent upon passage of the May 20/June 3, 1980, mill levy,” not the “new”, lower July 15, 1980, mill levy. ULP #29-80

“Defendants demonstrated reasonable grounds for setting the mill levy election for April 6, 1982.... Defendants remained willing and able to negotiate wages with Complainant even though the mill levy request was going to be set/was set.” ULP #5-82

See also ULP #11-79.

72.582: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Change of Employer [See also 11.16 and 41.8.]

The change to a joint City-County Public Library with a new board of trustees is not a defense against bad faith bargaining when the prior agreement contained a grievance clause that is rejected by the new board. ULP #13-75

Not informing a union of a change of employer is a failure to bargain in good faith. However, the charge is dismissed if the new employer honors the negotiated agreement. ULP #18-75

See also ULPs #17-77 and #19-79.

72.583: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Change of Union [See also 41.9.]

“The NLRB has consistently held that when one exclusive representative succeeds another, the successor organization is not bound by any agreements made by the previous representative....” ULP #20-76

See also ULP #7-78.

72.584: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - De Minimus

“The duty to bargain over the decision to transfer work to non-bargaining unit members did not arise because there was no significant adverse impact on bargaining unit members.... There was no unfair labor practice because the duty never arose.” ULP #16-84

72.585: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Fiscal Condition [See also 53.5 and 55.7.]

“[D]efendants did specify cutbacks in personnel as a possible ramification of increased costs to the District, particularly increased costs related to wages. However, the hearing examiner interpreted this as frank discussion of economic concerns, not as the issuance of an ultimatum.” ULP #5-82

72.586: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Impasse [See also 51.]

“The School Board contends that they are under no obligation to bargain once fact finding is called. That may be the case if impasse truly exists.... If the cause of impasse has changed during or after the request for fact finding or mediation, the parties are, once again, under an obligation to bargain even though the mediator or fact finder has not arrived.... [F]or one party to simply

call for third party assistance and then not to bargain with the other party during the interim (except when true impasse exists) would be contrary to the legislative intent and to actual mediation and/or fact finding request experiences." ULP #25-76

See also ULPs #20-78 and #23-78.

72.587: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Lack of Knowledge

"Adopting the [guidelines in PBM Industries Inc. (1975) 217 NLRB No. 28, 88 LRRM 1549], the School District is under no obligation to bargain with Local 185 without a request for a bargaining session." ULP #18-78

72.588: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Loss of Majority Status of Union

"I conclude that the loss of majority status was due to the employer's actions.... [This conclusion is] also based on the lack of evidence that no decertification petition was present until after the employer's action in August.... To let the School District withdraw recognition and refuse to bargain with the BAEA [Bigfork Area Education Association], would be letting the School District profit from their own wrong doing and would be stating that conditional bargaining, declaring non-existing impasse, making unilateral changes in working conditions and other School District actions had no effect on the bargaining unit.... [Therefore,] the School District violated Section 39-31-401(1) and (5) by withdrawing recognition from the BAEA and refusing to bargain with the BAEA." ULP #20-78

"The NLRB has developed a policy that calls for an employer to remain neutral when faced with a claim of majority status from two or more competing unions...." This does "not mean that the employer must stop negotiating with the recognized union because a rival union or group of employees files a decertification petition which does not infer a good faith doubt of majority status.... The School District violated Section 39-31-401(1) and (2) MCA by recognizing and negotiating with the BTA [Bigfork Teachers Association] when there was a real question of majority status, by interfering and restraining the Big Fork teachers in the selection of their collective bargaining representative and by dominating, and assisting in the formation of a labor organization, the BTA." ULP #20-78

See also ULP #30-78.

72.589: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Non-Mandatory Subject [See also 42.2, 42.3, and 73.477.]

The non-mandatory nature of the subjects cannot be determined on 14 issues presented. Therefore the charge is dismissed. ULP #11-75

"The Defendant in this matter did not show the matter of nonrenewal of nontenured teachers was expressly excluded from arbitration. Conversely, the matter is expressly included...." ULP #30-79

"[T]he alleged actions of the School Districts in this case, in taking a stance that certain items of negotiation were permissive, in the absence of accompanying allegations that the School Districts refused to discuss those items," did not violate the Act. ULP #13-83

See also ULPs #5-77, #6-77, #16-78, #20-78, #31-79, #43-79, and #31-82.

72.590: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Waiver [See also 09.64, 09.65, 09.66, 21.9, and 73.478.]

"I find no clear and unmistakable language in the contract which can be said to constitute a waiver of Complainant's right to bargain on classifications." ULP #17-78

“[T]he District entered into individual contracts with three teachers which reflect a salary less than that stated in the collective bargaining agreement.... The individual contracts cannot act as a waiver to a reduced salary level.... The District bargained individually with employees in violation of Section 39-31-401(5) MCA.” ULP #34-80

“Because the complainant, by written agreement, waived, with restrictions, the right to negotiate over subcontracting during the life of the collective bargaining agreement, ... a conclusion of law that Lockwood School District did not violate Section 39-31-401(1)(2) and (5), MCA is in order.” ULP #9-83

“The Great Falls Education Association waived its right to press the distinction between permissive and mandatory by giving unlimited authority to the factfinder.” ULP #13-83

“[N]one of the articles [in the collective bargaining agreement] contain ‘clear and unmistakable language’ waiving the Billings Education Association’s rights to object to, or voice a complaint about, or grieve management’s actions. It is elementary labor law that a waiver must be in ‘clear and unmistakable language’.” ULP #5-84

72.591: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Other

“[T]he City of Great Falls did not violate Sections 39-31-401(1) and (5) MCA by refusing to bargain with the Plumbers Union and the I.B.E.W. Union for the employees working as Plumbers and Inspectors. I conclude this because the complainants are covered by and bound by the Craft Council Contract.” ULP #26-79

Failure to implement an arbitration award is not a failure to bargain collectively. (This decision cites Section 59-1605(3) RCM 1949.) ULP #2-74. See also ULP #39-80.

“The courts have ruled: ‘Where the deviation between the unit requested by the union and the unit believed appropriate by the employer is unsubstantial and does not affect the union’s majority, it cannot justify the employer in refusing to bargain. (Cites.) The proper course for the employer in those circumstances is to refuse to bargain with respect to those employees whose unit status is disputed, not to wholly refuse to bargain.... [NLRB vs. Richman Brothers Co., et al., C.A., 7, 387 F2d 809, 67 LRRM 2051 (1967)].... Even if we assume that all 26 employees in the contested positions were in favor of no representation and add these votes to the no representation side of the equation, the union’s majority status will not be affected.’” ULP #30-78

“The question raised in this proceeding is not whether the employer has refused to go to the table and bargain, but rather, whether it agreed to incorporate certain items into the collective bargaining agreement with the Carpenters. I must conclude that it did not so agree.” ULP #13-80

“The U.S. Supreme Court in *NLRB v. Columbian Enameling* ... teaches that a union cannot charge an employer with failure to bargain when the union has not requested negotiations.... [W]e cannot find that the employer refused to bargain about the question of possible subcontracting when the Union *did not request negotiations*.” ULP #9-83

See also ULPs #18-78, #30-80, and #22-81.

72.6: Unilateral Change in Term or Condition of Employment

“The U.S. Supreme Court held in 1962 that an employer’s unilateral change in a condition of employment which is under negotiation may be held to violate Section 8(a)(5) even in the absence of a finding that the employer was guilty of over-all bad faith bargaining because such conduct amounts to a refusal to negotiate about the matter and must of necessity obstruct bargain-

ing. The Court went on to hold that such unilateral actions would rarely be justified by any reason of substance, however, it did not rule out the possibility that there might be circumstances under which such actions could be accepted or justified. *NLRB v. Katz*....” ULP #2-82

“When a situation exists where a unilateral change is made in a condition which is a mandatory subject of bargaining, the NLRB has held that such an action is a per se failure to bargain in good faith. [*NLRB vs. Katz*, 369 U.S. 736, 50 LRRM 2177 (1962)].” ULP #6-77

“It is well settled that unilateral changes in mandatory bargaining subjects by an employer is an unfair labor practice.... In contrast, a unilateral midcontract change relating to a permissive bargaining subject is not an unfair labor practice.” ULP #9-84

“In both *Fibreboard* and *Westinghouse*... the Court and the National Labor Relations Board in their analyses placed heavy emphasis on the detriment, or absence thereof, to the bargaining unit.” ULP #16-84

“The general rule laid down by the U.S. Supreme Court in *NLRB v. Katz* ... is that an employer has the duty to bargain with the representative of his employees before unilaterally changing the terms and conditions of their employment.... Although there is no evidence on the record to support a conclusion that it was customary for the city to transfer work out of the bargaining unit or that there was no substantial variance from the city’s past practices, it is clear that the determinative factor in cases such as the case *sub judice* is whether there has been a significant adverse impact on bargaining unit members.” ULP #16-84

72.611: Unilateral Change in Term or Condition of Employment - What Constitutes Change

“Complainant asserts that the change made by Defendant was a unilateral management initiated promotion. Defendant contends the change was a reclassification made under authority of Montana law. The facts ... show that the class specifications, which include the positions occupied by the affected employees were changed.... I must conclude that the change was a classification action primarily, which resulted in the promotion of certain employees.” ULP #17-78

72.612: Unilateral Change in Term or Condition of Employment - Established Practice [See also 42.45.]

“[T]he providing of free meals to employees of Silver Bow General Hospital was long established as a part of the employees’ compensation.... Eliminating the free meals shows a disregard of the ‘established bargaining relationship and its attendant obligations’ just as much as if the meal policy were spelled out in writing.... Discontinuing the policy of free meals ... constitutes a violation of Section 59-1605(1)(e), RCM 1947.” ULP #17-77

Once practices are established, an employer is “required to bargain in good faith; unilateral changes cannot be made ... even if [the practices] are not contained in the contract; unless ... there exists a waiver by the party to whom the duty to bargain is owed. In the instant case ... [no waiver] was obtained by Defendant prior to making the change in evaluation procedures.” ULP #43-79

“[O]n July 1, 1979, the management of Silver Bow General Hospital implemented a new approach to providing nursing services, the Total Patient Care concept. The implementation of the TPC concept was done under the pretext of a normal low census lay off. This action violates Article 18 of the 1978-80 Agreement and constitutes a unilateral change in the terms and conditions of bargaining unit employment by management.” ULP #29-79

“[A] unilateral midcontract change relating to a permissive bargaining subject is not an unfair labor practice.” Using the balancing test, the hearing examiner found “the payroll deduction of voluntary political action committee contributions to be a permissive subject of bargaining.” ULP #9-84

72.614: Unilateral Change in Term or Condition of Employment - Union Request for Bargaining

“[T]he School Board requested the opening of the contract to negotiate a salary increase for the employee in question.... The Union’s response ... [was to ask] to have the entire salary schedule of the contract opened to negotiation and to have a classification made for all jobs. The School Board did not consider this reply to be responsive to their request and proceeded to raise the salary of the employee in question following the precedent of raises given to employees who assume positions of greater difficulty or responsibility. I see no evidence that the School Board acted in any way to circumvent or erode the ability of the Union to properly and effectively represent the interests of its members.” ULP #38-76

See also ULPs #17-78 and #18-78.

72.615: Unilateral Change in Term or Condition of Employment - Adequacy of Bargaining

See ULP#37-81 Montana Supreme Court (1985).

72.616: Unilateral Change in Term or Condition of Employment - Changes Favorable to Employees

See ULPs #38-76, #17-78, and #31-82.

72.62: Unilateral Change in Term or Condition of Employment - Changes Prior to Bargaining Obligation

“The County ... violated 39-31-401(5) MCA when it made the unilateral decision to abolish the program and as a consequence terminate the employment of the individuals affected.” ULP #30-80

72.63: Unilateral Change in Term or Condition of Employment - Changes During Bargaining

“Unilateral changes by an employer during the course of a collective bargaining relationship concerning matters which are proper subjects of bargaining are normally regarded as ‘per se’ [without any consideration of good or bad faith] refusals to bargain [NLRB vs. Katz].” ULP #16-78

“The School District did violate Section 39-31-401(5) MCA by implementing unilateral changes in working conditions that were unsettled points in negotiations and before impasse was reached.” ULP #20-78

“[A] unilateral midcontract change relating to a permissive bargaining subject is not an unfair labor practice.” Using the balancing test, the hearing examiner found “the payroll deduction of voluntary political action committee contributions to be a permissive subject of bargaining.” ULP #9-84

See also ULP #33-81.

72.64: Unilateral Changes in Term or Condition of Employment - Changes after Expiration of Contract

See ULP #37-81 Montana Supreme Court (1985).

72.641: Unilateral Changes in Term or Condition of Employment - Changes after Expiration of Contract - Continuation of Contract Terms after Expiration

“Wages, however stated or paid, are a mandatory subject of bargaining. Therefore, a unilateral change in wages, even following expiration of a collective bargaining agreement, is a violation of 39-31-401(5), MCA.” ULP #37-81

“To not pay a teacher according to the contract’s stated method of placement on the pay matrix and in accord with the truth as to how many years experience and college credits that a given teacher actually has, is a unilateral change in a mandatory subject of bargaining.” ULP #37-81

“*To pay an automatic wage increment is not an unfair labor practice.... To not pay an automatic wage increase, such as a COLA, is a ULP.*” ULP #37-81

“[T]he Forsyth school district’s failure to pay returning teachers in the fall of 1981 the automatic step increase to which they were entitled was a violation of 39-31-401(1) and (5) MCA.” ULP #37-81

72.642: Unilateral Change in Term or Condition of Employment - Changes after Expiration of Contract - Other Changes in Working Conditions

See ULP #17-77.

72.65: Unilateral Change in Term or Condition of Employment - Changes during Term of Contract

“[T]he duty to bargain is an on-going process. Unilateral changes in respect to wages, hours and other terms and conditions of employment by an employer during this process is a clear violation of the Act. [See NLRB vs. Katz, 50 LRRM 2177 (U.S. Supreme Court 1962)].” ULP #34-80

“[T]he District unilaterally established a policy which affected the salaries of employees represented by a collective bargaining representative.” ULP #34-80

“The allocation of work to a bargaining unit is a term and condition of employment and an employer may not unilaterally attempt to divert work away from a bargaining unit without fulfilling its duty to bargain.” ULP #16-84

See ULP #17-78.

72.651: Unilateral Change in Term or Condition of Employment - Changes during Term of Contract - Change Not Covered by Contract

“Had the School Board established an attendance policy applying to every member under the union contract, then the unilateral initiation of a more dependable method to enforce this attendance policy would have been merely a change from the established rule.... [It] would have been a managerial prerogative.... The facts of this case do not lead to that conclusion. The School Board initiated additional rules, substantially changing old rules on the same subject.” Butte Teachers’ Union v. Silver Bow School District (1977)

See also ULPs #6-77 and #16-81.

72.652: Unilateral Change in Term or Condition of Employment - Changes during Term of Contract - Repudiation of Contract

“[A]n excellent argument is made to sustain a charge against an employer who refuses to honor a modified agency clause by failing to require an employee to join a union or pay a service fee in lieu thereof when such is required by contract and when the employee is covered by that contract. Were such facts present in the case at hand, a violation of ... (1) (2) would certainly be found.” ULP #17-76

“[A]n employer could not unilaterally negotiate terms different from those in the collective bargaining contract with prospective or newly hired employees.” ULP #7-80

“Assuming that individual teachers could waive or modify the terms of a collective bargaining agreement by written affidavit, a proposition upon which I decline to rule, attempts to alter the terms of the existing collective bargaining agreement via this contractual method were not made. Thus the question of a ‘clear and unmistakable’ contract waiver is not in issue (See *Timken Roller Bearing Co. vs. NLRB*, 352 F.2d 746, 751, 54 LRRM 2785 (6th Cir. 1963) cert. denied, 376 U.S. 971, 55 LRRM 2878 (1964)).” ULP #34-80

See also ULPs #29-79 and #2-82.

72.661: Unilateral Change in Term or Condition of Employment - Defenses to Unilateral Change - De Minimus

“Clauses specifying duty hours and schedules are common inclusions in teaching contracts but this contract had no such clause. Were there such a clause, and if the Board were to implement changes of this nature, a violation would exist. The lack of such a clause on the subject, the minor nature of the proposed changes, and the professional nature of the decision to make the proposal cannot sustain the charge of a violation.” ULP #14-76

72.662: Unilateral Change in Term or Condition of Employment - Defenses to Unilateral Change - Fiscal Necessity

See ULP #33-81.

72.663: Unilateral Change in Term or Condition of Employment - Defenses to Unilateral Change - Impasse [See also 51.]

“It is well established law in the private sector that once an impasse is reached an employer may unilaterally implement his last offer to the union so long as he does not go beyond the last offer. See *NLRB vs. Katz*, 369 US 736 (1962).” On October 8th, an impasse existed. ULP #17-75

“[I]f during negotiations impasse occurs, then the employer is free to unilaterally implement its last, best, final offer.” ULP #37-81

The Board of Personnel Appeals “simply ordered that, in absence of an ‘impasse,’ the provisions of the expired contract may not be unilaterally changed by the employer.” ULP #37-81 Montana Supreme Court (1985)

“Exceptions to the general rule that an employer violates Section 8(a)(5) by making unilateral changes in wages, hours, or other terms and conditions of employment have been recognized by the National Labor Relations Board and federal courts where an impasse in negotiations exists and where the union waived its right to bargain on the subject.” ULP #2-82

See also ULP #20-78.

72.664: Unilateral Change in Term or Condition of Employment - Defenses to Unilateral Change - Permitted by Contract

When the contract specifies that the employer has the right to determine the quantity of work to be subcontracted and retains “all rights not otherwise specifically covered...” then an unfair labor practice charge on the grounds of unauthorized subcontracting does not stand. ULP #3-75

“In 1981 the School District developed written guidelines for the administration of business leave. This was not improper so long as the written guidelines (a) were based on a reasonable interpretation of the contract, (b) reflected the meaning of the provision as it had been negotiated, and (c) did not depart in substance from the administration of the provision under the unwritten guidelines.... [T]he written guidelines met these criteria.” ULP #19-81

“Regarding the question of whether the Employer committed a violation of 39-31-401, MCA, when it set and paid Douglass’ salary, not only do I find that there is no evidence to show such a violation, it appears the Employer is paying him less (when his salary is converted to an academic year equivalent) than it pays an assistant professor without a doctorate.” ULP #2-82.

“The employer is allowed to make unilateral changes in wages provided the changes are within the understandings between the parties [C & C Plywood and Katz].... The understanding between the parties about Greg Jackson’s raise was a specific understanding. A specific understanding has control over a general understanding.... I give no weight to the argument that the County was free to increase Greg Jackson’s wages for ‘a classification reason’” ULP #31-82

See also ULP #18-78.

72.665: Unilateral Change in Term or Condition of Employment - Defenses to Unilateral Change - Management Prerogative [See also 43.9.]

The Employer has the prerogative to determine the quantity of work to be subcontracted. ULP #3-75

The transfer and assignment of teachers within a district is a matter of district policy and not of contractual agreement. Unilateral changes are appropriate. ULP #16-75

If there were a clause in the contract on duty hours and schedules “and if the Board were to implement changes of this nature [in duties and scheduling for the 1976-77 school year], a violation would exist. The lack of such a clause on the subject, the minor nature of the proposed changes, and the professional nature of the decision to make the proposal cannot sustain the charge of a violation.” ULP #14-76

The School Board raised an employee’s salary “above that specified in the contract. The contract, however, specifies only a floor beneath which an employee’s salary cannot be lowered; nowhere is it stated that the contract sets a ceiling above which an employee’s salary cannot be raised. In recent history the School Board has raised the salaries of several employees above the contractual minimum. The Union readily concurred in these previous changes.” ULP #38-76

“Exceptions to the general rule that an employer violates Section 8(1)(5) by making unilateral changes in wages, hours, or other terms and conditions of employment have been recognized by the National Labor Relations Board and federal courts where an impasse in negotiations exists and where the union waived its right to bargain on the subject.” ULP #2-82

See also ULPs #4-73, #16-78, #17-78, #43-79, and #16-81.

72.667: Unilateral Change in Term or Condition of Employment - Defenses to Unilateral Change - Other

“Appellant argues one important factor to be taken into consideration in determining the mootness of a case is what the U.S. Supreme Court has called on a number of occasions the ‘capable of repetition, yet evading review’ doctrine. This doctrine is limited to a situation where two elements are combined: (1) the challenged action was in its duration too short to be fully litigated prior to the cessation or expiration; and (2) there was a reasonable expectation the same complaining party would be subjected to the same action again. Considering the cases cited by both parties, we do not find a sufficient substantial interest to invoke the above doctrine. The Board of Personnel Appeals’ finding that, in the absence of an ‘impasse,’ the School District must continue to pay the salaries of expired collective bargaining con-

tracts pending agreement on a successful contract, and does not warrant action by this Court. Here the School District had already budgeted at least the amount in the expired contract for salaries and it suffers no loss." ULP #37-81 Montana Supreme Court (1985)

"I cannot agree [with the Employer's claim] that the situation was such that it posed a threat to the very business of the college itself. No disaster would have occurred had it lost Professor Spector's services. On balance, the Employer's duty to bargain in good faith with the Union outweighed its right to disregard that obligation in order to retain one teacher." ULP #2-82

See also ULP #33-81.

72.7: Other Unfair Practices

"[B]oth sides breached the collective bargaining agreement.... [V]iolation of a contractual provision is not per se an unfair labor practice and it is to be noted that the Montana statute does not provide such a provision as does the State of Wisconsin." ULP #11-79

"[N]either side to a collective bargaining situation has any obligation to disclose to the other its 'bottom line' or 'hole card' in the ordinary situation at the risk of being held to be in bad faith." ULP #11-79

72.71: Other Unfair Practices - Refusal to Accept Grievance Arbitration [See also 47.22, 47.71, 47.83, 47.87, 72.76, and 73.51.]

"[T]he District was in breach of contract when it refused to strike names from the arbitration list." ULP #5-80

"[I]t is clear under both state and federal law that an employer is obligated to submit grievances to binding arbitration, if the collective bargaining agreement so provides. However, that is not the issue raised by this charge.... The county did not refuse to process the grievance ... [it refused to] abide by the arbitrator's decision.... [B]y the time a grievance has gone into final and binding arbitration, as here, no element of bargaining exists for there is nothing to negotiate." ULP #39-80

"The collective bargaining agreement does not provide for the arbitration of grievances; therefore the refusal by Defendant to submit the matter to an arbitrator was not a failure to bargain in good faith." ULP #22-81

See also ULPs #2-74, #19-79, #30-79, and #7-80 and ULP #5-80 District Court (1981).

72.73: Other Unfair Practices - Refusal to Comply with Statute or Regulation

"[T]he State not only violated its contractual obligation but totally ignored the public policy set forth in the Governor's executive order [in that negotiations were not concluded prior to the construction of the executive budget]. While the Union did not seek a Writ of Mandate, it is clear from the testimony that Mr. Donald Judge [a union representative] was attempting to avoid this very situation." ULP #11-79

72.74: Other Unfair Practices - Refusal to Meet and Discuss [See also 41.6 and 73.54.]

See ULPs #27-77, #18-78, #20-78, and #11-79.

72.75: Other Unfair Practices - Refusal to Participate in Impasse Proceedings [See also 51.12, 53.24, 55.33, and 73.55.]

See ULP #11-79.

72.76: Other Unfair Practices - Refusal to Process Grievance [See also 47.22, 47.83, 47.87, 72.71 and 73.51.]

The new City-County Library Board must honor the grievance procedure and process grievances in accordance with the agreement made by the former employer (which was only the City of Billings). ULP #13-74

“There are at least two major avenues available to either party of a negotiated contract to render the contract more meaningful and responsive to the work situation at hand.... [1] If a matter has not been addressed in a standing contract, and no exact stipulation or waiver of rights to bargain on the matter is included in the contract, then the matter is a subject susceptible for further collective bargaining. [2] If a provision of a standing contract is disputed by either the employer or the Union, the ‘contractual mechanism’ for the continuing process of collective bargaining is the all important, agreed to, grievance procedure. This avenue ... is the route the Union has taken in this case.” ULP #13-74

“By refusing, and continuing to refuse, to bargain collectively with the Union through the use of the standing contractual grievance procedure, the Employer did engage and is engaging in an unfair labor practice within the meaning of Section 59-1605(3) of the RCM, 1947.” ULP #13-74

Refusal to bargain collectively through the contractual grievance procedure on the matter of “students experimental painting policy” is an unfair labor practice by the employer. ULP #1-75

“The City’s refusal to grant Dyer a grievance hearing [related to his discharge] is then, in effect, a refusal by the City to bargain over conditions of employment....” ULP #2-75

“At a minimum ... a grievance committee must give to an employee with seniority notice of the dismissal hearing and an opportunity to be heard, so that he may defend against the charges. Dyer received no notice and could therefore prepare no defense to the matter of his discharge.... For the term ‘hearing’ in the collective bargaining agreement to have any meaning, this employee must at least have notice of the alleged work violations, an opportunity to appear and present evidence in his own behalf, a right to cross-examine adverse witnesses, and a written report of the conclusions and rationale of the grievance committee. These procedures are mandated by the collective bargaining agreement which requires a hearing, as well as by ‘common justice’.” ULP #2-75 Montana Supreme Court (1977)

“Under Montana’s Collective Bargaining for Public Employees Act a failure to hold a grievance hearing as provided in the contract is an unfair labor practice for failure to bargain in good faith.... The decision of the District Court is reversed and the order of the Board of Personnel Appeals, finding that the city committed an unfair labor practice by not granting appellant Dyer a dismissal hearing, is affirmed.” ULP #2-75 Montana Supreme Court (1977)

An employer may not refuse to enter into the arbitration process as specified in the contract on the grounds that the subject matter of the grievance concerns management rights. ULP #3-76

“[T]he University of Montana did not commit an unfair labor practice by refusing to go to arbitration.... Both sides seem to be in error in handling the grievance.” ULP #37-76

“The Montana Supreme Court in *City of Livingston vs. AFSCME, Council 9*, 571 P.2d 374, 100 LRRM 2528 (1977) set forth the following.... ‘Under Montana’s Collective Bargaining Act for Public Employees a failure to hold a grievance hearing as provided in the contract is an unfair labor practice for failure to bargain in good faith’.” ULP #19-79

The grievance procedure is one mechanism “which allows employer and employees to arrive at friendly adjustment of all disputes.... [It is] essential for this Board to encourage the enforcement of those contractual provisions wherever possible.” ULP #7-80

In ULP #1-75, "this Board held that when an employer agrees to a grievance procedure, culminating in final and binding arbitration, its refusal to submit a grievance to arbitration is a refusal to bargain in good faith. That position was modified so that this Board would look to the collective bargaining contract to see if the parties agreed to process the grievance in dispute, and in cases of doubt the grievance will be ordered processed." ULP #7-80

"The Board of Personnel Appeals has consistently held that a refusal to participate in the processing of a grievance through the procedure established in the collective bargaining agreement, including the submission of the matter to binding arbitration, is tantamount to a refusal to bargain in good faith and, therefore, violates 39-31-401(5) MCA." ULP #39-80

"There was simply no evidence on the record that an incident had ever occurred over which the Association had even wanted to file a grievance." The Hearing Examiner dismissed "this unfair labor practice charge for lack of foundation." ULP #19-81

"The refusal to process a dispute concerning a labor contract, if it is in violation of the contract, is an unfair labor practice recognized by the Montana Board of Personnel Appeals, the State District Court and the Montana Supreme Court." ULP #18-83

"[A] grievance procedure culminating in final and binding arbitration existed between the parties at the time of Wood's termination. This grievance procedure provides the mechanism to decide disputes arising from the collective bargaining agreement. Butte-Silver Bow voluntarily bound itself to the grievance procedure contained in the collective bargaining agreement by signing that agreement. Failure to live up to this commitment is an unfair labor practice." ULP #18-83 District Court (1985)

See also ULP #30-79 Montana Supreme Court (1982).

72.77: Other Unfair Practices - Refusal to Supply Information [See also 41.7.]

"[T]he [School] Board had in its possession budgetary information which by law should have been made available to the association's negotiators. The Board did not expressly refuse to provide the requested information, but the failure to make a diligent effort to obtain and provide it reasonably promptly may be equated with a flat refusal. This information need not be in final form but should be the relevant information necessary for intelligent negotiations." ULP #14-76

"The NLRB has long held that it is the duty of the employer to furnish the union, upon request, sufficient information to enable the union to understand and intelligently discuss the issues raised in bargaining. In this instant case, the City has provided the basic information from which, by means of mathematical calculations, the KPPA [Kalispell Police Protective Association] could derive further specific detailed information." ULP #27-77

"I cannot conclude by the preponderance of the evidence that the School District misled or hid facts from the union." ULP #30-81

"[T]he National Labor Relations Board and the federal courts impose a duty on an employer to turn over, upon request of the labor organization, information in its possession which is necessary or relevant to the union in discharging its function as bargaining representative.... The duty to disclose applies both during negotiations over the terms of a contract and during the existence of a contract.... Lengthy delays in furnishing requested information will support a conclusion that the employer failed to bargain in good faith; short delays are considered reasonable.... Although the conduct of the Fire Chief in refusing to answer all questions about the terms and conditions of employment of the temporary employees could be termed a technical violation of his duty under the Act, the City did furnish all information requested

by the Union within a few days once the Union submitted a formal, written request.... The Union suffered no harm because it received the requested information within a reasonable time and its purpose in requesting the information was not frustrated, i.e., the Union was able to use the information furnished to formulate a timely decision on what its recourse was to be." ULP #16-84

73: UNION OR EMPLOYEE UNFAIR PRACTICES

"Unfair labor practices are those matters enumerated in 39-31-401 and 402 MCA. [See] *Ford v. University of Montana* 598 P.2d 604 (1979)." ULP #19-80

73.1: Interference with or Restraint of Employees' Rights

"[I]t is an unfair labor practice for a union to coerce an employer to dishonor valid notices of revocation of deduction authorizations when the effect is to 'restrain' public employees ... in the 'exercise of the right of self-organization, to form, join, or assist any labor organization.' ... MEA significantly involved itself in the affairs of the District in encouraging the District to continue to deduct the dues." ULP #2-79

See also ULP #44-79.

73.113: Interference or Restraint of Employees' Rights - Breach of Duty of Fair Representation [See also 23.]

"In short, the Court has to find that the Union's action was in some way a product of bad faith, discrimination, or arbitrariness. The mere fact that Bonnie Ford disagrees with the decision of the Union [in determining that her grievance was without merit] is not sufficient basis for a finding of breach of the duty of fair representation absent these factors." *Ford v. University of Montana* (1979)

"We agree with the Board of Personnel Appeals in this matter. We still recognize the holding in *Ford* that a District Court has original jurisdiction to hear claims that a union has breached its duty of fair representation. We no longer recognize, however, the dicta in *Ford* which states that a breach of the duty of fair representation is not an unfair labor practice within the meaning of section 39-31-402, MCA. Further, we no longer recognize other dicta in *Ford* which states that finding jurisdiction in the Board of Personnel Appeals on these matters would necessarily deprive the District Court of jurisdiction. We see no reason why jurisdiction in the District Court should deprive a grievant of his or her administrative remedies under the Act. *Vaca* itself stood for the proposition of concurrent jurisdiction in both the NLRB and the federal courts." ULP #24-77 Montana Supreme Court (1981)

"Thus it is settled under federal labor law and therefore under Montana labor law that a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner.... Contrary to petitioner's assertion, the hearing examiner did not find mere negligence in the Union's handling of the grievance.... [T]he hearing examiner emphasized 'this inaction combined with [the business agent's] subsequent statements to McCarvel indicate an active, intentional avoidance of accepting the grievance'." ULP #24-77 District Court (1985)

"The Union also contends the Board erred by making no finding related to discrimination, as is required for a conclusion that there has been a breach of the duty of fair representation. No such finding is necessary.... A clear majority of circuit courts applying the holdings of the Supreme Court [in *Vaca*] do not now require a finding of discrimination, bad faith or hostility on the part of the union to prove breach of the duty of fair representation. In this case, no finding as to discrimination was made because none was necessary." ULP #24-77 District Court (1985)

"On April 11, 1984, appellant began the present action alleging that his Union breached a duty of fair representation in handling his unfair labor practice charge.... Klundt alleges that the Union requested the Board to put his charges on hold. Even if the Union does not owe Klundt a duty of fair representation in this case [because it is not required to represent members outside of collective bargaining], that does not mean the Union has the right to affirmatively interfere with appellant's unfair labor practice charges.... If discovery or evidence at trial fails to support Klundt's claim, the Union may obtain a summary judgment or a directed verdict." ULP #38-80 Montana Supreme Court (1986)

"Since the law does not require the University Teachers Union to allow non-union members to vote on contract ratification, the above allegations do not allege either (a) a breach of the duty of fair representation or (b) a violation of 39-31-206." ULP #16-83

73.1142: Interference or Restraint of Employees' Rights - Discrimination for Seeking Recourse to State Board or Courts - Filing Charge or Petition

" '[T]he Defendant is willfully engaging in a course of conduct to discriminate against employees within a bargaining unit because said employees have attempted to exercise rights guaranteed.... Moreover, although it is not specifically prohibited in Montana law as it is in the NLRA, employees of the bargaining unit ... are being discriminated against by their union for filing a complaint before the Board of Personnel Appeals'." ULP #34-78

73.115: Interference with or Restraint of Employees' Rights - Illegal Campaign Practices

Section 59-1603(4) RCM states provisions for conducting business and elections for exclusive representatives of employees. The local is admonished to correct abuses immediately although the unfair labor practice charge was dismissed since all internal remedies had not been exhausted. ULP #18-76

73.31: Unfair Practices of Individual Employees - Dissident Group Activity

"Robert N. Noyes and others who circulated decertification cards fall under the definition of 'labor organization' of the Montana collective bargaining statutes and are accordingly conferred the legal rights and responsibilities conferred on labor organizations under those statutes." ULP #14-77

73.4: Refusal to Bargain in Good Faith [See also 41.63.]

See ULP #18-81.

73.41: Refusal to Bargain in Good Faith - Bargaining Demand

"[I]t does not become an unfair labor practice for the Association to present a specific economic proposal which may be equal to or greater than what the School Board budgeted." ULP #25-76

See also ULP #11-79.

73.433: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Failure to Make Counterproposals

The Union is not required to move on an economic offer. The unfair labor practice charge was dismissed. ULP #11-75

73.434: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Imposing Conditions

One of the Employer's counter charges was that the "Union was guilty of bad faith in insisting that ratification of the entire contract for the two years in the next biennium be accomplished as a condition of settling the strike." The Hearing Examiner concluded "that the Union's position is totally justified..." and dismissed the complaint. ULP #11-79

"The union admitted it refused to bargain on those subjects, but it asserted that its refusal was justified because: (1) the Sheriff was not the designated representative of the Employer; and (2) the subjects were untimely raised based on the parties' past practices in reopening the contract." ULP #45-81

73.440: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Totality of Conduct

See ULPs #11-79 and #45-81.

73.441: Refusal to Bargain in Good Faith - Indicia of Good/Bad Faith and Surface Bargaining - Withdrawal of Proposals

See ULP #11-79.

73.45: Refusal to Bargain in Good Faith - Insistence to Impasse on Non-Mandatory Subject [See also 42.2, 42.3, 51, 53.11, 55.92, and 72.54.]

"The union insisted to impasse on bargaining on a non-mandatory subject. There was no obligation on the part of the employer to bargain further once the repeal was effective. The state could bargain or not bargain on the subject as it saw fit." ULP #47-79

"[T]he Union's refusal to bargain with the Sheriff or to recognize him as a representative of the Employer who could properly submit proposals for bargaining would amount to a refusal to bargain in good faith.... The union was obligated to bargain on all subjects proposed by the Employer on December 23, 1981 with respect to wages, hours, fringe benefits and other conditions of employment as those terms are used in 39-31-301 MCA.... The cessation of negotiations was caused by the Union's refusal to negotiate in violation of 39-31-402(2) MCA." ULP #45-81

73.479: Refusal to Bargain in Good Faith - Defenses to Refusal to Bargain Charge - Other

"It cannot be stated unequivocally that in the past the parties limited negotiations to those subjects raised in the pre-negotiations correspondence. For that reason I cannot conclude that either party was limited in the number or kind of issues they raised as negotiations began on December 23rd." ULP #45-81

"Negotiations were properly opened between the parties, pursuant to the collective bargaining agreement, by the Sheriff when he sent the letter dated October 21, 1981." ULP #45-81

73.5: Other Unfair Practices

"[B]oth sides breached the collective bargaining agreement.... [V]iolation of a contractual provision is not per se an unfair labor practice and it is to be noted that the Montana statute does not provide such a provision as does the State of Wisconsin." ULP #11-79

"[N]either side to a collective bargaining situation has any obligation to disclose to the other its 'bottom line' or 'hole card' in the ordinary situation at the risk of being held to be in bad faith." ULP #11-79

"Nothing ... indicates that the Associations were involved in the decision to withhold the fees from the wages of certain employees without proper authorization, or that the Associations' involvement in this matter has been any other than that permitted by the contractual relationship with the School District." The Hearing Examiner "does not find merit in this charge." ULP #44-79. See also ULP #2-79.

The Association did not violate 39-31-401 MCA by distributing the evaluation form and teacher Knippel did not violate 39-31-402 MCA by calling the meeting. The Hearing Examiner noted that interference with management rights under 39-31-303 MCA "do not constitute unfair labor practices per se." ULP #19-80

73.53: Other Unfair Practices - Refusal to Comply with Statute or Regulation

One unfair labor practice charge was that "James Gillhouse, President of the Ronan-Pablo Unit of the MEA [Montana Education Association], refused to provide Complainant with a copy of the Constitution and by-laws of Defendant union because Complainants had formally exercised their rights guaranteed under the Act to join and assist a rival labor organization." However, since "Complainants were supplied with copies of the documents ... [after] the filing of unfair labor practice charges, there is no further remedy this Board could order with respect to this charge. This issue is therefore moot." ULP #34-78

"*Although* there was no obligation on the part of President Gillhouse to appoint these people [AFT-MEA members whose memberships were improperly revoked] to the committee, the fact that they could not even have been considered for appointment excluded them from participating in union ... activities." ULP #34-78

Nothing "sustains the charge that business was conducted in secret." ULP #34-78

"Although there was some evidence that AFT members had difficulty in obtaining membership applications, none amounted to a preponderance showing Mr. Gillhouse intentionally withheld these cards for an unreasonable period." ULP #34-78

The charge that the Defendant established two separate unions within the bargaining unit (one of dues paying members and one of non-dues paying members) was denied. "Although there was a motion passed to segregate votes, the minutes show that such segregation did not actually take place." ULP #34-78

73.54: Other Unfair Practices - Refusal to Meet and Discuss [See also 41.6 and 72.74.]

"The Association did ignore the requests for negotiations because it had taken a position that the Alteration of Master Contract should remain in full force because of passage of 'a' mill levy. Returning to the bargaining table would have compromised their position and the Association had the right to litigate its claim. (See Mine Workers, Local 184, 238 NLRB No. 214, 99 LRRM 1670....)" ULP #29-80

73.55: Other Unfair Practices - Refusal to Participate in Impasse Proceedings [See also 51.12, 53.24, 55.33, and 72.75.]

"[B]ecause Complainant did not request the formation of the Board of Review until April 15, 1981, well after the January 30th date specified ... the Defendant was not obligated to participate in the Board of Review process." ULP #18-81

74. UNFAIR PRACTICE REMEDIES

74.11: Nature or Purpose

See ULP #20-78.

74.12: Authority of Board of Personnel Appeals [See also 01.29.]

The District Court (Eleventh Judicial District) in *School District No. 38 v. Board of Personnel Appeals and Bigfork Education Association*, “enforced a Board of Personnel Appeals order that judged the NLRB and the Board of Personnel Appeals to have equal remedial powers.” ULP #42-81

See also ULPs #19-77, #20-78, #11-79, and #19-79, and DC #8-77.

74.14: Persons Bound by Order

See ULP #19-79.

74.15: Individual Liability of Officers, Agents and Representatives [See also 09.12.]

See ULP #19-79.

74.16: Time Limitation of Order

“This Board retains jurisdiction for the purpose of hearing this complaint as an unfair labor practice charge if: (1) the respondent does not ... file a written statement with this Board...; (2) an appropriate and timely motion adequately demonstrates that this dispute has not, with reasonable promptness after the issuance of this Order, been resolved in the grievance procedure or by arbitration; or (3) an appropriate and timely motion adequately demonstrates that the grievance or arbitration procedures were not conducted fairly.” ULP #13-78

74.17: Considerations in Fashioning Remedies

“In cases where the employer had interfered, restrained and coerced the employees in the exercise of their rights as set forth in Section 7 of the NLRA, the NLRB remedies all [appear] to strike a balance between the severity of the employer’s action and the purpose of the NLRA, Section 1, 29 USCA 151.... The Collective Bargaining Act for Public Employees appears to have the same purpose Section 39-31-101 MCA as the NLRB has.” ULP #18-82

See also ULPs #19-77, #11-79, and #42-81.

74.21: Other

“The County is required to accept the collective bargaining agreement as executed by Teamsters ... No. 448 and Operating Engineers Local 400.... Caution must be exercised that if it is subsequently found that the County will suffer loss of funding or other penalty due to the size of the wage settlement in the offer, some issues may have to be renegotiated.” ULP #10-79

74.3: Types of Orders

“Under Section 39-31-406(4), the Board may order a party to cease and desist from an unfair labor practice and may order affirmative action ‘as will effectuate the policies of this chapter.’ ... In dealing with similar statutory language, the Montana Supreme Court has recognized that if the Board determines the employee is aggrieved, it has full discretion to resolve the employee’s grievance. *Hutchin v. State of Montana Department of Fish, Wildlife and Parks* ... (Mont. 1984) interpreting 2-18-1012. ... In the case of an unfair labor practice arising from a breach of the duty of fair representation, there is no standard remedy.... Essentially the union must make the employee whole.” ULP #24-77 District Court (1985)

“The National Labor Relations Board has ordered remedies such as none at all in *Fisher* ... to a cease and desist order in *Yearbook* ... to reinstatement in *F.S. Willey* ... to a bargaining order without a representation election in *Gissel Packing Co.*...” ULP #18-82

See also ULP #42-81.

74.31: Types of Orders - Cease and Desist

See ULPs #2-73, #3-73, #4-73, #5-73, #13-74, #1-75, #2-75, #5-75, #13-75, #16-75, #17-75, #4-76, #6-76, #11-76, #13-76, #14-76, #15-76, #16-76, #20-76, #21-76, #25-76, #37-76, #39-76, #41-76, #5-77, #6-77, #17-77, #19-77, #25-77, #11-78, #16-78, #17-78, #19-78, #20-78, #23-78, #34-78, #2-79, #3-79, #19-79, #29-79, #30-79, #31-79, #44-79, #7-80, #10-80, #19-80, #30-80, #34-80, #16-81, #33-81, #37-81, #42-81, #45-81, #2-82, #18-82, #29-82, #34-82, #18-83, #29-84, and #34-84.

74.32: Types of Orders - Restoration of Status Quo Ante

“Not withdraw any benefits previously awarded keypunch operators represented by MPEA.” ULP #17-78

“Rescind the establishment of the Total Patients Care concept as implemented during the 1978-80 contract and restore the work in contention back to the bargaining unit.” ULP #29-79

“Rescind its changed policy on the evaluation procedure.” ULP #43-79

“Remove from the personnel file of Ms. Knippel the memorandum dated May 9, 1980 which placed her on probation.” ULP #19-80

“To insure full protection of affected employee rights this Board ... must order the County to reinstitute the crash fire rescue program previously provided by the employees who were terminated and to reinstate those employees to their former or substantially equivalent positions with back pay computed from the date of discharge minus any wages earned elsewhere.” ULP #30-80

“Place Daisy Langton on the 8-year experience level of the negotiated salary schedule.... Place Betty McGarvey, when she returns from maternity leave, on the experience level consistent with 14 years of experience, BA + 1, of the negotiated salary schedule....” ULP #34-80

“Withdraw the administrative memorandum promulgated by Principal C.P. Garrett on April 24, 1981.... Remove any reports of ‘deviations’ which have been placed in teachers’ personnel files.... Destroy any reports of ‘deviations’ received by them.” ULP #20-81

“I will order the City to sign the collective bargaining agreement incorporating the tentative agreement changes of August 17th, and will order the City to pay all wages and fringe benefits required by the collective bargaining contract to the employees covered by the collective bargaining contract that are or have been employed by the City from July 1, 1981 to the date of the settlement of this charge.” ULP #42-81

The School District was ordered to “confer with counsel for the Association on amounts due the Association in accordance with this decision. If conference with Association’s counsel does not settle the matter of amounts due, inform this Board so that a remedial hearing, pursuant to the parties’ stipulation ... may be set.” ULP #29-84

See also ULPs #13-75, #11-76, #16-76, #11-78, #20-78, #30-79, #29-82, and #34-82.

74.33: Types of Orders - Reinstatement [See also 81.5087.]

See ULPs #16-75, #5-76, and #34-78 and *Hutchin v. Department of Fish, Wildlife & Parks* (1984).

74.331: Types of Orders - Reinstatement - Entitlement

See *Welsh v. Great Falls* (1984).

74.335: Types of Orders - Reinstatement to Former or Substantially Equivalent Position

See ULPs #3-73, #4-73, #5-73, #15-76, #28-76, #39-76, #41-76, #17-77, #19-77, #11-78, #23-78, #3-79, #29-79, #10-80, #30-80, and #29-82 and *Hutchin v. Department of Fish, Wildlife & Parks* (1984) and ULP #3-79 Montana Supreme Court (1984).

74.336: Types of Orders - Reinstatement without Prejudicing Privileges and Benefits

See ULPs #28-76, #39-76, #19-77, #29-79 and ULP #3-79 Montana Supreme Court (1984).

74.34: Types of Orders - Restitution [See also 81.5087.]

"The NLRB has ruled ... [that moving] expenses are a liability to the employer...." However, the Hearing Examiner could not grant Mr. Nau's moving expenses because "Mr. Nau had an obligation to set forth his expenses at the unfair labor practice hearing on September 20, 1977 [which he did not do].... The right to cross examination and a clear statement of damages are at the heart of a fair hearing." ULP #19-77

"Refund the representation service fees that have been withheld from the employees' wages without the written authorization of the individual employees." ULP #44-79

"[T]he parties in this matter had reached agreement on a collective bargaining agreement and the retroactive pay pursuant to that agreement. Because the retroactive pay, at issue in this matter, had been paid, no monetary relief is possible for a remedy." ULP #37-81

"Following federal precedent, all of the parties agree that back pay is not always an appropriate remedy for an aggrieved employee." ULP #3-79 Montana Supreme Court (1984)

See also ULPs #4-73, #5-73, and #2-79 and *Hutchin v. Department of Fish, Wildlife & Parks* (1984).

74.341: Types of Orders - Restitution - Liability for Back Pay

Should the Board make an award of back pay "on the basis that it would 'effectuate the policies of this Act.' ... Since there was no finding by the Hearing Examiner that the unfair labor practice committed by the Defendant prolonged the negotiations, and there is no evidence in the record which would support such an assertion, we find Defendant's argument has merit. Therefore, this Board finds that our Order requiring an award of back pay is not warranted in this situation." ULP #17-75

The Hearing Examiner ordered "that those employees denied the meals by the discontinuance be reimbursed \$1 [the price the hospital charges for meals] for each day they would otherwise have received a free meal." ULP #17-77

"Rocky Boy School District No. 87 is ordered to make Charles Nau whole in regard to lost wages, lost benefits and interest in full compliance with this order." ULP #19-77

"[F]or the purpose of assessing damages, the NLRB deems it proper to resolve the grievance in favor of the discriminatee and not the wrongdoer." ULP #24-77

"Once the Board has established the amount of back pay owed an otherwise wrongfully discharged employee, the burden is upon the employer to produce evidence to mitigate its liability.... The City has not demonstrated how the available evidence can reasonably be interpreted as indicative of indifference, insincerity or slothfulness on Young's part in his search for employment." ULP #3-79 Montana Supreme Court (1984)

“The claim for back pay is based on Section 39-31-401(4) MCA. Here ... the State’s insistence on the stipulation as a condition to fact finding did not constitute an unfair labor practice so this statute does not come into play.... On the federal level, the NLRB has consistently held that those involved in an admitted unfair labor practice strike are *not* entitled to back pay.” ULP #11-79

“Make those teachers whole who were not paid for the seventeen days after June 4, 1981 by paying them the amount they would have received had they been paid in accordance with the terms of the payment made to the twenty teachers who were paid for those seventeen days.” ULP #34-82

See also ULPs #3-73, #5-73, #15-76, #28-76, #3-79, #34-80, and #42-81 and *Hutchin v. Department of Fish, Wildlife & Parks* (1984) and *Welsh v. Great Falls* (1984).

74.342: Types of Orders - Restitution - Joint Liability for Back Pay

[T]aking the rationale used by the federal courts to apportion damages in breach of duty of fair representation/contract cases, and taking the rationale used by the NLRB to apportion damages in duty of fair representation claims and other claims involving union and/or employer misconduct (including breach of the collective bargaining agreement by both the union and employer), the basic principle is that when both the union and the employer have injured an employee, statutory policy requires that a transgressor should bear the burden of the consequences stemming from its illegal acts, and damages attributable solely to the employer’s breach of contract should not be charged to the union but increases, if any, in those damages caused by the union’s refusal to process the grievance should not be charged to the employer.” ULP #24-77

“Both the union and the City are liable to McCarvel for damages during the period of time that it would have taken to process the McCarvel grievance through issuance of the arbitrator’s decision (stipulated to as being 70 days). The Union alone however is responsible for McCarvel’s damages after this point by failing to process McCarvel’s grievance to be paid pursuant to the collective bargaining agreement.” ULP #24-77

74.343: Types of Orders - Restitution - Duty to Mitigate Damages

“While composing the Proposed Order in the ... matter, I could not determine if Charles Nau, teacher, had mitigated his damages.... On March 23, 1978, I received Mr. Nau’s affidavit ... [he had] sought employment.... I find that Mr. Nau has mitigated his damages and the affidavit is correct.” ULP #19-77

“[U]nemployment compensation benefits are not to be used as an offset against back pay.” ULP #30-80. See also ULP #19-77.

“There is substantial credible evidence to support the Board’s decision that Mr. Young exercised reasonable diligence to obtain interim employment between October 31, 1978 and July 20, 1979, the time frame [over which] the remedy is to be fashioned.” ULP #3-79 District Court (1983). See also ULP #3-79 Montana Supreme Court (1984).

See also ULPs #28-76, #24-77, and #29-79.

74.344: Types of Orders - Restitution - Computation of Backpay

“I will order back pay with interest and the restitution of lost benefits--insurance, teacher’s retirement, social security--as stated ... [in] the Proposed Opinion.... All parties are also directed to exchange all needed information to effectively execute this order.” ULP #19-77

"The U.S. Supreme Court in *NLRB vs. Seven-Up Bottling Co.* (1953), 344 U.S. 344, 31 LRRM 2237, upheld the Woolworth pay formula.... Woolworth Co. case (1950) 90 NLRB No. 41, 26 LRRM 1185 and 1186 (p.28): '...the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of reinstatement....' I hereby adopt the above logic and formula in computing Velk's and Nau's back pay, benefits and expenses.... [The] calculation will end at the end of the school year...." ULP #19-77. See also ULPs #29-79 and #30-80.

"Because there is no contractually determined salary schedule ... use the following formula..." explained on page 30 of the March 10, 1978 Proposed Order. ULP #19-77

"Unemployment compensation income is not to be considered as income." However, such income has to be paid back to the unemployment office. ULP #19-77. See also ULP #30-80.

"I grant any difference in any benefit [insurance, teacher retirement, social security] ... that Velk and ... Nau may have lost to be paid by the School District to the respective agency with interest." ULP #19-77

"In order to accomodate this order, the parties are directed to exchange and provide this Board a copy of all calculations ... within 30 days of the last day of school in the year that the School District offers Velk and Nau reemployment." ULP #19-77

"[T]he Bowen method of apportionment cannot be applied *identically* to the McCarvel situation because McCarvel involves a union's acquiescence in the breach of the collective bargaining agreement by the employer. That is in addition to the fact that McCarvel is an unfair labor practice before a Board and Bowen and Vaca involved court actions." ULP #24-77

"An employee who is entitled to overtime both contractually and statutorily cannot be given comp time instead. The library policy cannot supersede state law or a collective bargaining agreement." ULP #24-77 District Court (1985)

"In this case, it would be manifestly unjust to the grievant to limit back pay to the six months prior to filing the unfair labor practice with the board. To thus limit the award would in effect reward the Union for its procrastination in handling the grievance." ULP #24-77 District Court (1985)

"In accordance with *Strachen Shipping Company* and *Groves Granite* we agree with the Board's conclusion that damages began when McCarvel requested the Union handle his grievance in March of 1976 and continued until he resigned his city employment on June 30, 1978." ULP #24-77 District Court (1985)

"This award properly effectuates the statutory policy of making the grievant whole." ULP #24-77 District Court (1985)

"We also conclude the monetary damages awarded are within the statutory and case law precedents and that there was no abuse of Board discretion." ULP #24-77 District Court (1985)

"Meet with representatives of the Union and attempt to determine the amount due [in making Bruce Young whole by repaying him for lost wages, benefits and interest incurred since October 31, 1978]...; if a mutual determination cannot be made within 10 days, notify the Board of Personnel Appeals' hearing examiner who will hold a hearing and issue a detailed remedial order." ULP #3-79

"The period for calculating back pay typically begins to run at the time of the illegal discharge and ends when the aggrieved employee's reinstatement becomes effective.... However, this remedial period can be reduced if there is

proof of mitigating circumstances. The burden of proof is on the employer to establish that it would not have had work available for an illegally discharged employee due to economic or other factors. ULP #3-79 Montana Supreme Court (1984). See also ULP #3-79 District Court (1983).

“In calculating the amount of back pay due an illegally discharged employee, the Board utilizes a method first developed and used by the National Labor Relations Board in *F.W. Woolworth Co.* This method, commonly referred to as the ‘Woolworth formula,’ has been approved by the United States Supreme Court. *NLRB v. Seven-Up Bottling Co. ...* Under this formula, the NLRB and the Board compute back pay ‘on the basis of each separate calendar quarter or portion thereof’ from the time of the illegal discharge to the time of a proper offer of reinstatement. The quarters begin with the first day of January, April, July and October.... We emphasize that this method has been approved by the United States Supreme Court as a proper exercise of informed discretion. *Seven-up Bottling Co. ...* The only caveat expressed by the Court was that the NLRB could not ‘apply a remedy it has worked out on the basis of its experience, without regard to circumstances which may make its application to a particular situation oppressive and therefore not calculated to effectuate a policy of the [National Labor Relations] Act.’ “ ULP #3-79 Montana Supreme Court (1984). See also ULP #3-79 District Court (1983)

See also ULPs #28-76 and #10-80.

74.345: Types of Orders - Restitution - Interest

“I hereby grant 6 percent annual interest to be added to all awarded back pay, benefits and expenses.” ULP #19-77

“There is no question that the variable rate [Florida Steel Corp.] formula used by the hearing examiner and approved by the Board results in an effective interest rate exceeding ten percent... However, we are not convinced that the statute [Section 25-9-205(1), MCA] prevents the use of variable rates when calculating interest due on back pay awards.... Taking into consideration the justification for awarding interest on any monetary judgment and the remedial purposes of the Montana Public Employees Collective Bargaining Act, we conclude that the Florida Steel method for calculating interest is lawful.... The award of interest encourages more prompt compliance with Board orders and discourages the commission of unfair labor practices, thereby effectuating the legitimate ends of labor legislation.... Thus, the statutory provision on interest must not supplant, but should complement, the legitimate ends of public policy.” ULP #3-79 Montana Supreme Court (1984). See also ULP #3-79 District Court (1983).

“[W]e have calculated interest by the formula adopted by the NLRB in *Florida Steel Corporation* [231 NLRB No. 114, 96 LRRM 1070 (1977)]. This formula requires that interest on back pay and other monetary remedies be computed utilizing the Internal Revenue Service ‘adjusted prime interest rate’ which is a sliding interest scale charged or paid by the IRS in underpayment or overpayment of Federal taxes.” ULP #24-77. See also ULPs #30-80 and #34-82.

In *Great Falls v. Young and Board of Personnel Appeals* (1984) “the [Montana Supreme] Court held the Florida Steel interest standard applicable to unfair labor cases under Montana law.” ULP #24-77 District Court (1985)

“The statute [that part of Section 25-9-205 related to statutory interest rates] does not prevent the use of variable interest rates when calculating interest due on back pay awards, but should complement the legitimate ends of public policy. *Great Falls [v. Young and Board of Personnel Appeals]* (1984) ... The interest award will therefore not be disturbed.” ULP #24-77 District Court (1985)

See also ULPs #28-76, #3-79, and #10-80.

74.35: Types of Orders - Punitive Damages

“Because [the Hearing Examiner] lacks the authority to assess punitive damages, ... [she] cannot consider the Union’s request that she direct the District to pay the costs it [AFSCME] has incurred in this matter.” ULP #5-80

“Because the record lacks any signs of an anti-union attitude on the part of the defendants, an order requiring such things as a reimbursement to the Union of expenses associated with this charge, a quarterly calculation plus interest on wages and benefits the employees would have received, and posting of cease and desist notices would be inappropriate.” ULP #42-81

74.351: Types of Orders - Punitive Damages - Fines and Penalties

“The question of whether this Board has jurisdiction to grant the penalty aside, McCarvel is due no penalty since the 18 month period [related to the statutory penalty] has long since lapsed.” ULP #24-77

74.352: Types of Orders - Punitive Damages - Attorney’s Fees

“[T]his board has no authority to award attorney fees at the administrative level. In Thornton vs. The Commission of Labor and Industry, the Montana Supreme Court spoke to this specific issue.” ULP #24-77

“The Union shall not be reimbursed for legal or other expenses incurred as a result of bringing these charges.” ULP #3-79

“The Montana Supreme Court has long adhered to the rule that attorneys’ fees may not be awarded to the successful party unless there is a contractual agreement or unless there is specific statutory authorization.... [U]nder these cases an award could not be made in the absence of specific statutory authorization. Moreover, even if this Board had the equity power of a District Court, the claims here are not of the type which would bring this case within Foy vs. Anderson, ... an equitable exception to the general rule.” ULP #11-79

“Mr. O’Connell has not referenced or argued the question of legal cost in his brief.... [T]he remedies provided the Board of Personnel Appeals do not include awarding legal costs.” ULP #19-79

74.353: Types of Orders - Punitive Damages - Other

The Hearing Examiner “would not adopt in this case the blanket pay order often used in the private sector but rather judging this case on its individual merits order the District to pay to the teachers, through the BEA [Billings Education Association], one day’s pay. Anything less would be a meaningless hand slap.. Anything more would not take into account the role of the BEA in creating many of the problems about which it now complains.” However, the Board of Personnel Appeals in its final order stated that “it is ... the interpretation of the U.S. Supreme Court that the language of section 10(c) does not give the NLRB punitive powers. We find that the same interpretation is applicable to our statute, 59-1607(2). We therefore reverse the Hearing Examiner’s award of one day’s pay to the Complainants as being outside the authority of this Board to make such an award on a punitive basis.” ULP #17-75

74.36: Types of Orders - Notice to Employees

See ULPs #6-77, #11-78, and #20-78.

74.361: Types of Orders - Notice to Employees - Posting

See ULPs #5-73, #5-75, #16-75, #6-77, #19-78, #23-78, #34-78, #3-79, #30-79, #10-80, #30-80, #34-80, #18-82, #29-82, #34-82, #29-84, and #34-84.

74.362: Types of Orders - Notice to Employees - Mailing

“While an order requiring the posting of notices may be more common, the National Labor Relations Board has, under identical discretionary language, required mailing of the notices to employees.... Given the unique facts

of this case, including the egregious behavior of the Union in refusing to file the grievance for more than 17 months, we believe the Board's remedial order requiring the Union to mail the notices is not an abuse of power." ULP #24-77 District Court (1985)

"The bargaining unit involved here is a broad, multicraft unit represented by the Public Employees Craft Council.... Because this unfair labor practice involves only the Teamsters, it is difficult to see how mailing notice of the violation to all the members of the bargaining unit will effectuate the policies of the statute. But the choice of the Board will not be disturbed unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the statute.... No such showing has been made in this case." ULP #24-77 District Court (1985)

See also ULPs #6-77 and #24-77.

74.372: Types of Orders - Interim Relief - Ability to Grant

"Having taken under advisement the motion of the Complainant for any appropriate temporary relief, ... it is the opinion of the Hearing Examiner that the Board of Personnel Appeals or its duly appointed agent does not have the jurisdiction to entertain said motion. Therefore, it is ordered ... denied." ULP #4-73

"The BEA [Billings Education Association] ... requests the Board of Personnel Appeals to seek a restraining order or other appropriate temporary relief in order to: (1) compel School District No. 2 ... to meet and bargain in good faith..., (2) restrain the defendant from issuing individual contracts which require the defendant to repudiate contracts already issued, and (3) restrain the defendant from any further individual bargaining.... The Board can only seek a restraining order or other appropriate relief incident to the enforcement of those [final] orders [issued pursuant to unfair labor practice proceedings] ... In the instant case, the Board has not yet issued a final order.... We do not intend, by this order to address the Complainant's right to seek injunctive or other equitable relief." The request is denied. ULP #17-75

74.39: Types of Orders - Bargaining Orders [See also 32.99.]

"Immediately submit three names acceptable to the Employer for participation in the contractual grievance procedure, in order to resolve the grievance in question." ULP #13-74

"I do order the City to forthwith begin negotiations with the Union with regard to the matter of wages.... Any time after this order might be adopted as the order of the Board of Personnel Appeals and if the City then fails to negotiate, as the Collective Bargaining Act requires, with the Union, I would then make a finding of bad faith on the part of the City." ULP #14-74

"Convene the grievance committee ... within ten days of the date of this order, in order to resolve the grievance which relates to Kenneth Dyer's discharge.... Notify the Board of Personnel Appeals, in writing, as to the grievance committee's findings with regard to the grievance in question." ULP #2-75

The School District was ordered to "authorize its negotiating team to conduct meaningful negotiations and arrive at tentative agreements" and to "meet with the Association and negotiate in good faith at all scheduled negotiation sessions unless such sessions are cancelled by mutual agreement or, should a situation arise where attendance at such sessions is not possible, inform the members of the Association's negotiation team, as early as is possible after such a situation arises, of [their] inability to meet." ULP #14-76

"The Defendant(s) are ordered to proceed and participate in the arbitration as set forth in the labor contract between the Montana Public Employees Association and Cascade County Commissioners." ULP #19-79

“Immediately implement the arbitration proceedings necessary to process the grievances of Dorothy Tone and Connie Udem.” ULP #30-79

“Hold an open hearing for Kathryn P. Kifer at which she be allowed to have full opportunity to call witnesses and have representatives speak on her behalf.” ULP #43-79

“Within five days of the time this Recommended Order becomes the Final Order of the Board, agents of the District and the Union shall meet to select an arbitrator from the list provided by the Board of Personnel Appeals on December 10, 1979. In accordance with the coin flip of December 14, 1979, the Union shall strike the first name. The parties shall then participate in the arbitration process as specified in their collective bargaining agreement.” ULP #5-80

“The School District shall proceed with the processing of Robert Jackson’s grievance as provided in the 1978 collective bargaining agreement.” ULP #7-80

“It is ... ordered that this Complaint be remanded to the grievance-arbitration procedure outlined in the collective bargaining agreement between the parties to this matter.... The respondent will ... file a written statement with this Board indicating that it is willing to arbitrate this issue and to waive the procedural defense that this grievance is not timely filed.... The parties will then process this grievance....” ULP #43-81

“The defendants shall immediately begin to process the grievance filed by Gale Wood pursuant to the grievance procedure contained in the collective bargaining agreement.” ULP #18-83

See also ULPs #2-73, #15-74, #16-74, #17-75, #20-75, #4-76, #6-76, #20-76, #24-77, #17-78, #20-78, #23-78, #30-78, #47-79, #29-80, and #16-81.

74.40: Types of Orders - Submission to Impasse Proceedings [See also 51.5.]

See ULPs #13-74, #24-77, and #7-80.

74.41: Types of Orders - Rescinding Certification [See also 32.98.]

“The election held in UD #8-81 is hereby vacated and the certification of AFSCME as the exclusive representative of certain members of the Gallatin County Sheriff’s Office is hereby revoked.... This order does not preclude the filing of another petition for unit determination and another election.” ULP #3-82

81. ENFORCEMENT OR REVIEW OF BOARD ORDERS

81.112: Enforcement - Jurisdiction - Board of Personnel Appeals

The Board of Personnel Appeals had jurisdiction to hear UD #7-79 even though it failed to give notice of the pending action to the Miles City Police Protective Association (MCPPA) pursuant to MCA 39-31-207(1)(a)(ii). “The City had not been prejudiced by the circumstance that the former bargaining unit (MCPPA) was not given notice. The MCPPA was aware of the pending proceedings for designation of a new bargaining unit, could have intervened, and all employees belonging to that bargaining unit had a ballot choice between the two bargaining units.” UD #7-79 District Court (1980)

81.18: Enforcement - Enforcement by Board of Personnel Appeals

“[T]he members of the Board of Personnel Appeals ... decided that the Board would not attempt to enforce any portion of their Final Order in ULP #3-79 ... as long as the matter has been appealed to the Montana Supreme Court.” ULP #3-79

81.19: Enforcement - Enforcement by Courts

See ULP #3-73 District Court (1974), ULP #4-73 District Court (1974), ULP #20-76 District Court (1977), and ULP #5-80 District Court (1981).

81.191: Enforcement - Enforcement by Courts - Court Procedure

"Section 2-4-702, MCA, governs judicial review proceedings under the Administrative Procedure Act, including review of decisions by the Board of Personnel Appeals." ULP #3-79 Montana Supreme Court (1981)

See also ULP #3-73 District Court (1975).

81.31: Review - Jurisdiction

"No party questions the venue in this case, and the Court concludes here that it has venue over the parties. The Court also concludes that it has jurisdiction over these matters and all of the parties. The Court has already decided this jurisdictional question when it concluded to continue the stay herein, pending outcome of the petitions for judicial review and adopts by reference herein its Order of June 8, 1977, in which it held that the Board of Personnel Appeals' order, dated April 8, 1977, denominated 'Final Order', was a final decision relative to the composition of the collective bargaining unit at Montana State University for purposes of the Montana Administrative Procedure Act [Section 82-4216] ... and was, therefore, reviewable by the district court." UD #11-76 District Court (1978)

"Because the prior district court action on this matter involved consideration of the issue of jurisdiction only, we review the Board's earlier unfair labor practice decision as well as its more recent decision on remedies." ULP #24-77 District Court (1985)

"This Court has jurisdiction over the parties and subject matter herein." ULP #34-82 District Court (1985)

81.331: Review - Standards for Appeal - Unfair Practice Orders

See ULP #4-73 District Court (1974) and ULP #30-78 District Court (1980).

81.333: Review - Standards for Appeal - Election and Representation Orders

See UD #22-77 District Court (1978), UD #7-79 District Court (1980), and ULP #20-78 Montana Supreme Court (1979) and District Court (1981).

81.374: Review - Parties - Necessary or Indispensable Parties

The State Board of Personnel Appeals is not required to be designated as a party on a petition for judicial review. "We believe that Rule 19, M.R. Civ.P., does not, by its terms, contemplate inclusion of an administrative board as an indispensable party for purposes of judicial review." ULP #3-79 Montana Supreme Court (1981)

81.46: Issues Common to Appeal or Enforcement Proceeding - Stay of Board Order While Court Proceedings Pending

"Before judicial review began, the agency order was stayed and the review was held in abeyance pending the outcome of *City of Billings v. Billings Firefighters Local No. 521* (Mont. 1982) That case involved the grandfather clause as it pertained to bargaining units and bargaining agreements in existence in 1973, the effective date of the Act. After *City of Billings* was decided judicial review commenced." UC #6-80 Montana Supreme Court (1985)

See also ULP #2-73 District Court (1974), ULP #16-76 District Court (1977) and ULP #20-78 District Court (1980).

81.461: Issues Common to Appeal or Enforcement Proceeding - Stay of Board Order While Court Proceedings Pending - Criteria for Granting Stay

“Defendant ... has petitioned this Board to stay its Final Order until the District Court proceedings have been completed. In view of the fact that Ms. Roberta Sharp is presently employed and that the staying of this Board’s Final Order will not result in any pecuniary loss to Ms. Sharp, ... [it is ordered] stayed until the District Court proceedings are completed.” ULP #39-76

81.47: Issues Common to Appeal or Enforcement Proceeding - Record

“Where a striking teacher had not been rehired by a board of trustees following a strike and where after an administrative hearing the teacher was ordered rehired with backpay, the hearing record of the Board of Personnel Appeals, including several pages of testimony from witness tending to show that the teacher’s problems were strike-related, contained sufficiently substantial evidence to support the Board’s findings that the teacher’s discharge was the result of unfair labor practices and to support the order of the Board.” ULP #28-76 Montana Supreme Court (1979)

81.48: Issues Common to Appeal or Enforcement Proceeding - Additional Evidence [See also 09.3.]

“Issue no. 2 need not be considered or decided here because the resolution of issue no. 1 negates the need for additional evidence based on City of Billings to be received in this case.” UC #6-80 Montana Supreme Court (1985)

81.49: Issues Common to Appeal or Enforcement Proceeding - General Principles

“The Court finds the challenged section of the Final Order of the Board of Personnel Appeals not in violation of constitutional and statutory provisions, is not in excess of the statutory authority of the Board, was not made upon unlawful procedure, is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and is not arbitrary, capricious, characterized by abuse of discretion or clearly unwarranted exercise of discretion.” ULP #17-75 District Court (1978). See also ULP #20-78 District Court (1980).

The Court found “that no substantial rights of Plaintiff have been prejudiced.... Wherefore, by virtue of the foregoing and the statutory requirement that this Court not substitute its judgment as to the weight of the evidence on questions of fact, this Court concludes that there is substantial evidence on the whole record to support the aforesaid findings, conclusion, and final order of the State Board of Personnel Appeals, and therefore, the aforesaid findings, conclusion and order are hereby affirmed.” ULP #20-78 District Court (1980)

81.491: Issues Common to Appeal or Enforcement Proceeding - General Principles - Review Confined to Record

“Montana has adopted the ‘clearly erroneous’ test and has accepted the definition that ‘A finding is “clearly erroneous” when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’ *Brurud vs. Judge Moving & Storage Co., Inc.*, 1977, 563 P.2d 558, 559.... Administrative agency action is further limited in that its findings of fact must be based upon the evidence in the record before it.... Since, upon judicial review, this Court cannot substitute its own judgment for that of the agency as the weight of the evidence on questions of fact, Section 82-4216(7).... [T]he decision of the Board of Personnel Appeals to exclude all College of Engineering faculty members ... is hereby affirmed.... When an agency has not made findings of fact and conclusions of law in the first instance, however, the Court, upon review, should not enter any findings, but can only remand....” UD #11-76 District Court (1978)

“Specifically, the factual findings of the Board of Personnel Appeals will be upheld if supported by substantial evidence. Section 39-31-401(4), MCA. MAPA [Montana Administrative Procedure Act] allows factual findings to be overturned when they are ‘clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.’ Section 2-4-704(2)(e), MCA. We find these tests can be harmonized. If there is substantial credible evidence in the record, the findings are not ‘clearly erroneous.’ Under either statute the scope of judicial review is the same. If the record contains support for the factual determinations made by the agency, the courts may not weigh the evidence. They are bound by the findings of the agency.” UC #1-77 Montana Supreme Court (1982)

“Appellant argues that the District Court erred in considering alleged misconduct not mentioned in the notice of discharge.... There is a sufficient nexus between the other incidents considered by the District Court reflecting Carlson’s noncooperation and the discharge letter to warrant the District Court’s actions.” ULP #10-80 Montana Supreme Court (1982)

One of the issues on appeal was “whether the District Court abused its discretion by making findings of fact not based on the record and also by making findings of fact specifically contrary to the findings of the Board of Personnel Appeals.” The Court found that one of the District Court’s findings “was recognized by the hearing examiner but was not clearly stated in his findings. The District Court merely translated the hearing examiner’s finding, it did not substitute its judgment for that of the agency on the weight of the evidence on the question of fact. Therefore, the District Court was within its authority under §2-4-704 MCA, to make the challenged findings.” Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984)

See also UD #7-79 District Court (1980), ULP #4-73 District Court (1974), ULP #20-78 District Court (1980), and ULP #30-79 Montana Supreme Court (1982).

81.492: Issues Common to Appeal or Enforcement Proceeding - General Principles - Waiver of Arguments not Raised before Board

“The District Court went on to decide the broader issue of whether the school district has to arbitrate the substantive basis of nontenured teacher nonrenewal.... The Board recognized that the issue as to whether nonrenewal was for just cause was not before it. It was unnecessary for the District Court to address the issue.” ULP #30-79 Montana Supreme Court (1982)

81.493: Issues Common to Appeal or Enforcement Proceeding - General Principles - Deference to Board Expertise

“The scope of judicial review for an unfair labor practice case is provided by section 39-31-409 MCA. This statute provides, in essence, that the courts are not to substitute their judgment for that of the agency. The findings of the board as to questions of fact are conclusive if supported by substantial evidence on the record considered as a whole. Section 39-31-409(4).” ULP #28-76 Montana Supreme Court (1979)

“In reviewing legal questions, the scope of review is broader. Where the intent of statutes is unclear, deference will be given to the agency’s interpretation.” UC #1-77 Montana Supreme Court (1982)

“We may also ask if the agency action is arbitrary, capricious or unreasonable.” ULP #24-77 District Court (1985)

“In regard to the timeliness of the hearing issue, since the statutes and rules are lacking (or unclear), this Court will give deference to Board of Personnel Appeals interpretation.” ULP #38-80 District Court (October 1985)

"We are also aware that the agency's interpretation is usually entitled to great consideration, *Montana Consumer Counsel v. Public Service Commission* ... (1975), but it has not demonstrated to us that this interpretation is of such long standing or so relied upon that deference to the agency is warranted. See *Bartels v. Miles City*.... This is particularly true in light of: (1) the agency's representation that a Section 206 proceeding is extremely rare and that there are therefore no set rules or precedent interpreting the section or fleshing out its guidelines, and (2) the examiner's finding that this union had never been certified even though it acted as an exclusive representative for an undetermined period of time." CC #2-81 District Court (1983)

See also UD #7-79 District Court (1980).

81.50: Issues Common to Appeal or Enforcement Proceeding - Standards for Review

"The Administrative Procedure Act applies to the Board and its actions (39-31-104, 2-4-701, 2-4-102(2) and 2-3-102) and under that act we may reverse or modify the Board's decision where either the findings of fact are 'clearly erroneous in view of the reliable, probative and substantive evidence on the whole record (2-4-704(2)(e)) or the conclusions of law violate or are in excess of the statutory authority (2-4-704(2)(a) and (b)) or the action of the agency is arbitrary, capricious or characterized by an abuse of discretion (2-4-704(2)(f))." ULP #24-77 District Court (1985)

"In order to strengthen the administrative process and to promote judicial economy, the Montana Supreme Court in *Vita-Rich Dairy, Inc. v. Department of Business Regulation*, 553 P2d 980 (1976) has limited judicial review of an administrative decision to three determinations by a district court. If the reviewing district court finds that (a) a fair procedure was used (b) questions of law were properly decided, and (c) the decision of the administrative body is supported by substantial evidence, then the administrative order should be affirmed. This Court is not to substitute its judgment for that of the agency." ULP #3-79 District Court (1983)

"A decision by the Board of Personnel Appeals found that the refusal of a School District to arbitrate whether the procedural steps for nonrenewal of a nontenured teacher were followed was a breach of the collective bargaining agreement and constituted an unfair labor practice. On appeal, the District Court went on to decide the broader issue of whether the School District was required to arbitrate the substantive basis of nontenured teacher nonrenewal. The District Court exceeded the proper scope of judicial review." ULP #30-79 Montana Supreme Court (1982)

"Section 2-4-704, MCA, sets for the MAPA [Montana Administrative Procedures Act] standards of review to be followed by a district court when reviewing an agency decision." UC #1-77 Montana Supreme Court (1982) See also ULP #10-80 Montana Supreme Court (1982)

"Standards for review to be followed by this court are set forth at Section 2-4-704, MCA.... In the recent case of *City of Billings v. Billings Firefighters Local No. 521* [UC #1-77 Montana Supreme Court (1982)]... the Montana Supreme Court clarified the standards of review for findings of fact and conclusions of law to be used by the courts...." ULP #38-80 District Court (October 1985)

81.502: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Findings of Fact

"The governing statute provides: 'The court may not substitute its judgment for that of the agency as the weight of the evidence on questions of fact.' Section 2-4-704(2), MCA. There is substantial, and as we have herein noted, abundant evidence to support those determinations. Therefore, we reinstate the findings of the Board of Personnel Appeals that only the line battalion chiefs, the fire marshal and the communications officer are supervisors." UC #1-77 Montana Supreme Court (1982)

"In considering whether a finding of fact should be sustained, we ask if it is supported by 'substantial evidence'." ULP #24-77 District Court (1985)

"Though conflict may exist as to whether McCormick asked for, but never received these overtime records, this testimony provides substantial evidence to support the Board's finding that McCarvel was prepared to present the records, but was told they were not necessary. This settles the factual question." ULP #24-77 District Court (1985)

"Our review is confined to the question of whether there is substantial evidence to support the finding of the Board that Young had exercised reasonable diligence [in obtaining interim employment during the period in which he was laid off by the City]." ULP #3-79 Montana Supreme Court (1984)

"It is true that a court may not substitute its judgment for the agency's findings of fact.... Although these statements appear in the District Court's findings of fact, they are actually conclusions drawn from the facts found by the hearings officer, which the District Court accepted in Finding of Fact No. 3. There was no error committed by the District Court in this regard." ULP #10-80 Montana Supreme Court (1982)

"If the record contains support for the factual determination made by the agency, the court may not weigh the evidence. They are bound by the findings of the agency." ULP #38-80 District Court (October 1985)

"The [d]istrict [c]ourt, to reverse these findings of fact, [has] to find the record bare of 'substantial credible evidence.'" City of Billings [UC #1-77 Montana Supreme Court (1982)] at 633. This Court finds no such shortage of evidence to support the Board of Personnel Appeals' decision." ULP #38-80 District Court (October 1985)

"The Board of Personnel Appeals' Finding that the teachers did not make themselves available and remain subject to the call of Petitioner after June 4, 1981, is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." ULP #34-82 District Court (1985)

"The standard of judicial review of an agency's findings is set forth in §2-4-704(2)(e) MCA...." Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984)

"We have determined that a finding is 'clearly erroneous' when, although there is evidence to support it, a review of the record leaves the court with the definite and firm conviction that a mistake has been committed.... Here the District Court was left with a definite and firm conviction that a mistake had been committed." Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984)

"Although findings 6 and 11 are substantially factual, they are not entirely so. The findings also contain legal conclusions. It was the legal conclusions implicit in the hearing examiner's findings that were modified by the District Court." Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984)

One of the issues on appeal was "whether the District Court abused its discretion by making findings of fact not based on the record and also by making findings of fact specifically contrary to the findings of the Board of Personnel Appeals." The Court found that one of the District Court's findings "was recognized by the hearing examiner but was not clearly stated in his findings. The District Court merely translated the hearing examiner's finding, it did not substitute its judgment for that of the agency on the weight of the evidence on the question of fact. Therefore, the District Court was within its authority under §2-4-704 MCA, to make the challenged findings." Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984)

81.503: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Conclusions of Law

"The Board of Personnel Appeals' interpretation of section 39-31-109, MCA, the grandfather clause, is primarily a question of law.... The Board of Personnel Appeals' interpretation of the grandfather clause is rational, does not involve an abuse of discretion and we reinstate." UC #1-77 Montana Supreme Court (1982)

"ARM [24.26.547] does not limit the subject of investigation to that prescribed by the statute; it does not require the board to reach a conclusion as to whether there is a reasonable cause to believe a question of representation exists; it doesn't elucidate as to what the hearing is supposed to be about, and it doesn't require the board to even consider whether there is reasonable cause to believe the representation exists before calling an election. This is not implementation of the statute, it is legislation. Insofar as it does not implement the statute it need not be adhered to either by the board or the court." DC #22-77 District Court (1978)

"In considering whether a conclusion of law should be sustained we ask if it is contrary to law." ULP #24-77 District Court (1985)

"In reviewing legal questions, the scope of review is broader. Where the intent of the statutes is unclear, deference will be given to the agency's interpretation.... Where it appears that the legislative intent is clearly contrary to agency interpretation, the courts will not hesitate to reverse on the basis of 'abuse of discretion'." ULP #38-80 District Court (October 1985)

"The Board of Personnel Appeals' Conclusion that the Petitioner was under no obligation to pay the teachers for more than the one day they reported for work is characterized as abuse of discretion and constitutes an error of law." ULP #34-82 District Court (1985)

"The Board of Personnel Appeals' Conclusion that the payment to the teachers is inherently destructive of protected rights and that no proof of anti-union motivation of the Petitioner need be presented is characterized as abuse of discretion and constitutes an error of law." ULP #34-82 District Court (1985)

"The Board of Personnel Appeals' Conclusion that the conduct engaged in by Petitioner ... is clearly prohibited conduct under §39-31-401, MCA, is characterized as abuse of discretion and constitutes an error of law, and is prejudicial of substantial rights of the Petitioner." ULP #34-82 District Court (1985)

81.504: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Mixed Questions of Law and Fact

"The determination of a bargaining unit involves mixed questions of law and fact as is hereafter discussed. In reviewing the Board of Personnel Appeals' findings of fact and conclusions of law, we will be bound by the foregoing scope of review." UC #1-77 Montana Supreme Court (1982)

"Although findings 6 and 11 are substantially factual, they are not entirely so. The findings also contain legal conclusions. It was the legal conclusions implicit in the hearing examiner's findings that were modified by the District Court." Wage Appeal of Highway Patrol Officers v. Board of Personnel Appeals (1984)

81.505: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Interpretation of Statutes

"In reviewing legal questions, the scope of review is broader. Where the intent of statutes is unclear, deference will be given to the agency's interpreta-

tion Where it appears that the legislative intent is clearly contrary to agency interpretation, the courts will not hesitate to reverse on the basis of 'abuse of discretion'." UC #1-77 Montana Supreme Court (1982)

"The Board of Personnel Appeals' interpretation of the grandfather clause previously discussed, recognizes existing bargaining units containing supervisory personnel in violation of section 39-31-201, MCA. The Board recognized that public policy supports elimination of conflict of interest within a bargaining unit and therefore, notwithstanding its interpretation of the grandfather clause, sought to foster the spirit of the Act by adopting a legal test to eliminate actual substantial conflict. The validity of such a test is a question of law." UC #1-77 Montana Supreme Court (1982)

"The statute is clear, and restrictive, with regard to the hearing to be held upon the filing of a decertification petition... (Section 59-1606(1)(b))" DC #22-77 District Court (1978)

See also ULP #4-73 District Court (1974) and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

81.506: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Interpretation of Administrative Regulations

"ARM [24.26.547] does not limit the subject of investigation to that prescribed by the statute; it does not require the board to reach a conclusion as to whether there is a reasonable cause to believe a question of representation exists; it doesn't elucidate as to what the hearing is supposed to be about, and it doesn't require the board to even consider whether there is reasonable cause to believe the representation exists before calling an election. This is not implementation of the statute, it is legislation. Insofar as it does not implement the statute it need not be adhered to either by the board or the court." DC #22-77 District Court (1978)

See ULP #4-73 District Court (1974).

81.5081: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Bargaining Orders

See ULP #20-78 District Court (1980) and ULP #30-79 Montana Supreme Court (1982).

81.5082: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Board Deferral to Arbitration

"A 'prearbitral deferral policy' was first enunciated by the NLRB in Collyer.... We can distinguish Collyer on these factors alone. The Board's findings ... show that the City's conduct 'does not lead one to believe that a stable collective bargaining relationship exists between the parties,' that 'there was no indication of a willingness on the part of the City to arbitrate,' and that the 'grievance procedure provided in the contract does not culminate in a final and binding decision.... [T]he City's reliance on Section 39-31-310, MCA is misplaced. It claims that the section is a legislative mandate that public employers are not bound to go to final and binding arbitration, thereby nullifying any contrary NLRB ruling. In fact, the section is permissive, not mandatory. It merely allows the parties to agree voluntarily to submit any or all issues to final and binding arbitration. No such agreement was made here, nor does the contract require it.... Furthermore, the NLRB in General American Transportation Corp. (1977) ... held that the Collyer doctrine is not applicable in cases involving alleged interference with protected rights or employment discrimination intended to encourage or discourage the free exercise of those rights.... The charge here involves such alleged violations. Deferral is inappropriate in this case." ULP #3-79 Montana Supreme Court (1982)

See also ULP #3-79 District Court (1981) and ULP #5-80 District Court (1981).

81.5083: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Cease and Desist Orders

See ULP #20-78 District Court (1980).

81.5084: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Conduct of Elections

“The writ of mandate [for the Board of Personnel Appeals to forthwith conduct an election] dated March 12, 1979 by the District Court for the Eleventh Judicial District ... is hereby vacated and set aside.” ULP #20-78 Montana Supreme Court (1979)

See also ULP #20-78 District Court (1981).

81.5087: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Reinstatement and Back Pay [See also 74.33 and 74.34.]

“The make whole remedy begins to run at the time the illegal act occurs and terminates when the claimant’s reinstatement becomes effective.” ULP #3-79 District Court (1983). See also ULP #3-79 Montana Supreme Court (1984).

“The Board was correct in the formula it used in computing the back pay liability. The formula is set forth in Woolworth Company ... and NLRB v. 7-Up Bottling Company.... The formula effectuates the policies of the law and was properly applied. ULP #3-79 District Court (1983). See also ULP #3-79 Montana Supreme Court (1984).

“[T]he Board’s method in calculating interest due and application thereof was proper.... Again, the purpose of Montana collective bargaining law is to make a person whole for his rights being violated. To hold otherwise would be in the detriment of the person whose rights were violated and not consistent with the spirit or intent of the law. Indeed, to hold otherwise, the result of which would make it profitable to delay paying Mr. Young as long as possible, thus, in effect reducing the City’s total back pay liability at Mr. Young’s detriment.” ULP #3-79 District Court (1983). See also ULP #3-79 Montana Supreme Court (1984).

81.5089: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Unfair Practice Decisions

“The Board has broad authority to remedy an unfair labor practice.” ULP #24-77 District Court (1985)

“Such procedural steps for nonrenewal are clearly ‘conditions of employment’ and are subject to collective bargaining. As we said in Wibaux Education Association v. Wibaux County High School (1978), 175 Mont. 331, 573 P.2d 1162: ‘It is clear that arbitration [under the collective bargaining agreement] would be available on a limited basis if the “grievance” was that the school officials or School Board failed to comply with either the evaluation or hearing procedures outlined in [the agreement].’ 573 P.2d at 1164. The refusal of the school district to submit this matter to arbitration violated Art. XIII, §2 of the Collective Bargaining Agreement. This was a failure to bargain in good faith and constitutes an unfair labor practice.... See City of Livingston vs. AFSCME Montana Council No. 9 (1977), 174 Mont. 421, 571 P.2d 374.” ULP #30-79 Montana Supreme Court (1982)

See also ULP #2-75 District Court (1976), ULP #17-75 District Court (1978), ULP #30-78 District Court (1980), and ULP #37-81 Montana Supreme Court (1985).

81.5090: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Unit Determinations

"It is not the function of this Court to agree or disagree with the findings of the Board when there is substantial evidence supporting those findings. After reviewing the record and the applicable law, the Court finds that the evidence adequately supports the Board's findings and conclusion [that the lieutenants of the Miles City Police Department were not supervisory personnel]. Also, ... it is ordered that the findings of the Board declaring that the Shift Commanders are not supervisory employees within the statutory definition found in MCA 39-31-103(3) be affirmed." UD #7-79 District Court (1980)

See also UD #22-77 District Court (1978).

81.5091: Issues Common to Appeal or Enforcement Proceeding - Standards for Review - Particular Board Decisions - Other Decisions and Orders

"Because of the conclusion noted above [related to the word 'certification'], it is our opinion that the respondent Board had no jurisdiction to hear or in any way dispose of the petitioners' original application and in doing so acted in excess of its statutory authority." CC #2-81 District Court (1983)

81.521: Issues Common to Appeal or Enforcement Proceeding - Judgment - Affirmance of Appeal or Enforcement of Order

"The decision of the Board is affirmed in its entirety." ULP #24-77 District Court (1985)

"This Court ... concludes that there is substantial evidence on the record considered as a whole to support the findings and conclusions of the Board with regard to the violations of ... [subsections] (1) and (3)." ULP #3-79 District Court (1981)

"Regarding the charges themselves, the District Court concluded 'that there is substantial evidence ... to support [them]....' Again we agree." ULP #3-79 Montana Supreme Court (1982)

"We find that the District Court exceeded the proper scope of judicial review and reverse its judgment, reinstating the Board's final order. We hold that the refusal of the school district to arbitrate whether the procedural steps for nonrenewal were followed was a breach of the collective bargaining agreement and constituted an unfair labor practice. Because the question is not properly before us, we do not address the other issue raised by appellants: Whether a school district may agree to arbitrate the substantive basis for nonrenewal of a nontenured teacher." ULP #30-79 Montana Supreme Court (1982)

"The decision of the Board of Personnel Appeals is supported by substantial evidence on the whole record and there has been no error of law warranting reversal under the standards of review of the Montana Administrative Procedure Act, Section 2-4-704(2) MCA. The decision of the agency ordering reinstatement of Susan Carlson and full back pay is hereby affirmed." ULP #10-80 District Court (1985)

"The Final Order of the Board of Personnel Appeals is hereby AFFIRMED, and Petitioner's request for reinstatement and back wages is DENIED. Teamsters request for attorney's fees is DENIED; costs are GRANTED." ULP #38-80 District Court (October 1985)

"Considering the cases cited by both parties, we do not find a sufficient substantial interest to invoke the above ['capable of repetition, yet evading review'] doctrine. The Board of Personnel Appeals' finding that, in the absence of an 'impasse,' the School District must continue to pay the salaries of expired collective bargaining contracts pending agreement on a successful contract, does not warrant further action by this Court." ULP #37-81 Montana Supreme Court (1985)

“This Court in its research has found not one Montana or federal case, nor have Defendants provided or cited any, that would support Defendant’s averrance that the Board erred as a matter of law in dismissing Briggs’ unfair labor practice charge. The Board’s May 22, 1984, Order is hereby affirmed as final on the issues presented to and decided by it.” ULP #16-83 District Court (1985)

“[T]his Court holds in favor of Plaintiff on its Motion for Summary Judgment, and against Defendant Briggs on the Counterclaim for judicial review.” ULP #16-83 District Court (1985)

See also ULP #17-75 Montana Supreme Court (1979), DC #6-76 District Court (1978), ULP #28-76 Montana Supreme Court (1979), DC #4-78 District Court (1979), ULP #20-78 Montana Supreme Court (1979), ULP #3-79 District Court (1983), ULP #3-79 Montana Supreme Court (1984), ULP #5-80 District Court (1981), ULP #38-80 Montana Supreme Court (1986), DC #8-81 District Court (1982), and ULP #18-83 District Court (1985).

81.522: Issues Common to Appeal or Enforcement Proceeding - Judgment - Reversal or Modification

“[T]he Decision of the Board of Personnel Appeals is reversed, the Final Order of the Board is vacated, and the unfair labor practice charge against the Petitioner, Missoula County High School District, is dismissed.” ULP #34-82 District Court (1985)

See also ULP #2-75 Montana Supreme Court (1977), DC #22-77 District Court (1978), and ULP #3-79 District Court (1981) and Montana Supreme Court (1982).

81.523: Issues Common to Appeal or Enforcement Proceeding - Judgment - Remand to Board

“The administrative procedure act applies to this review (Section 59-1616). Under the authority of that act (Section 82-4616(7)) the matter is remanded to the Board of Personnel Appeals to proceed with the petition for decertification in accordance with Section 59-1606 and the Board’s regulations promulgated thereunder.” DC #22-77 District Court (1978)

“We remand, directing that the petition be dismissed.” CC #2-81 District Court (1983)

See also ULP #24-77 Montana Supreme Court (1981) and ULP #10-80 Montana Supreme Court (1982).

81.524: Issues Common to Appeal or Enforcement Proceeding - Judgment - Restraining Orders and Injunctions

See UD #26-79 District Court (1980).

81.526: Standards for Review - Judgment - Dismissal of Appeal or Enforcement

“Ordered, adjudged and decreed that Plaintiff’s Complaint ... is hereby dismissed with prejudice as to each of the defendants, and it is further ordered, adjudged and decreed that each Party hereto shall bear his or its own costs and expenses of litigation.” ULP #38-80 District Court (April 1985)

“A motion to dismiss should not be granted unless it appears beyond doubt that the non-moving party can prove no set of facts entitling him to relief.... All well-pleaded allegations of the non-moving party are deemed to be true.” ULP #38-80 Montana Supreme Court (1986)

See UD #18-76 District Court (1977), UD #7-79 District Court (1980), ULP #2-73 District Court (1974), ULP #4-73 District Court (1974), ULP #28-76 District Court (1978), ULP #39-76 District Court (1978) ULP #20-78 District Court (1980), and ULP #30-78 District Court (1980).

81.527: Standards for Review - Judgment - Other Judgments

“Pursuant to request of counsel during oral argument to reserve the question of damage, Plaintiff shall within 10 days of this Order submit to the Court a statement of present damages, disregarding attorney’s fees. Defendants shall, within 20 days thereafter, submit objections, if any, to the amount of the obligations designated by Plaintiff. A hearing by this Court, if requested, may be given if discrepancies arise. Future noncompliance with the requirements of Section 3.20 shall be subject to sanctions and further court order.” ULP #16-83 District Court (1985)

81.54: Issues Common to Appeal or Enforcement Proceeding - Costs and Fees

“[T]he decision of the Board of Personnel Appeals is hereby affirmed, with costs awarded to the respondent.” ULP #3-79 District Court (1983)

“[T]he amount due to Plaintiff would presumably be those fees outstanding and due as of the date of this Order. Future acts of noncompliance, in defiance of the present Order, shall be subject to sanctions and further Court order requiring payment of fees or equivalent amounts.” ULP #16-83 District Court (1985)

“The collective bargaining agreement does not specifically state that ‘damages’ under the language of Section 3.200 shall include attorney’s fees if the University Teachers Union is successful in its civil action against a unit member who fails to pay the union fee or authorized obligation. Such language could easily have been included, but without such specific language the Court will not interfere with the plain provisions of the collective bargaining agreement.” ULP #16-83 District Court (1985)

“The granting of attorney’s fees and costs by courts in Montana normally must rest on a statute or contract. However, the District Court reserves the power to grant complete relief under its equity power.” ULP #38-80 District Court (October 1985)

“Petitioner’s action in wrongfully naming Teamsters in the present review has resulted in a complication of the proceedings and hours spent by the Teamsters (and their attorneys) toward gaining their dismissal.” ULP #38-80 District Court (October 1985)

“Federal courts will often apply the following test to determine the propriety of attorney’s fees awards: ‘Did plaintiff’s counsel multiply this case unreasonably, vexatiously and in bad faith? In light of the strict guidelines on judicial review, the Petitioner, and certainly his attorney, should have realized that it was improper to join the Teamsters as a Party Defendant in this particular matter. However, this Court will not in its discretion go so far as to find that the Petitioner and his attorney acted vexatiously or in bad faith under the circumstances.... This Court finds that Petitioner’s acts in naming Teamsters to the present action, were at the very least, unreasonable and constitute poor judgment.’” ULP #38-80 District Court (October 1985)

81.6: Enforcement or Review of Board Decisions - Appeal to Higher Court

“Unless there is a clear preponderance of evidence against such findings [of the District Court], the Court will not reverse.” Butte Teachers Union v. Silver Bow County (1977)

See ULP #2-75 District Court (1976), ULP #20-78 District Court (1981), and ULP #3-79 District Court (1981) and Montana Supreme Court (1982), and ULP #37-81 Montana Supreme Court (1985).

81.62: Appeal to Higher Court - Stay of Lower Court Decision

See ULP #20-78 Montana Supreme Court (1979).

81.65: Appeal to Higher Court - Remand

See ULP #24-77 Montana Supreme Court (1981), ULP #3-79 Montana Supreme Court (1981), and ULP #10-80 Montana Supreme Court (1982).

84. ACTIONS COLLATERAL TO BOARD PROCEEDINGS**84.182: Proceedings to Enforce or Mandate Board Action - Board Actions Sought to be Enjoined - Unfair Practice Proceedings**

See ULP #11-78 District Court (1980).

84.191: Proceedings to Enforce or Mandate Board Action - Board Action Sought to be Mandated - Representation Proceedings

See ULP #20-78 Montana Supreme Court (1979).

84.192: Proceedings to Enforce or Mandate Board Action - Board Action Sought to be Mandated - Unfair Practice Proceedings

"According to Section 2-4-701, MCA, 'a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.' An agency's failure to act constitutes agency action.... Under this statute, Klundt could have petitioned this Court to require the Board to hold a hearing." ULP #38-80 Montana Supreme Court (1986)

APPENDIX I
UNIT DETERMINATION CASES

UNIT DETERMINATION CASES

* Denotes Excerpt in "Annotation of Montana Cases" Section

CITATIONS

| | | | |
|------------|--|---------------------------------------|---|
| UD #1-74 | Montana Public Employees Association and Eastern Montana College (12 March 1974) | Patrick F. Hooks, Chairman | 15.18 33.21 33.341 |
| UD #2-74 | Montana Public Employees Association and City of Billings (8 April 1974) | Patrick F. Hooks, Chairman | *33.311 33.323 |
| UD #3-74 | Teamsters Local 45, International Union of Operating Engineers Local 400 and City of Glasgow (12 March 1974) | Patrick F. Hooks, Chairman | 15.51 |
| UD #4-74 | Teamsters Local 45 and Havre Public Schools (12 March 1974) | Patrick F. Hooks, Chairman | 16.43 *33.343 33.45 34.34 |
| UD #5-74 | Teamsters Local 45 and Liberty County Hospital and Nursing Home (16 August 1974) | Patrick F. Hooks, Chairman | 15.2 15.212 15.23 |
| UD #6-74 | Montana Public Employees Association and Department of Health and Environmental Sciences (12 March 1974) | Patrick F. Hooks, Chairman | 16.22 33.43 34.13 |
| UD #9-74 | American Federation of State, County and Municipal Employees and Department of Highways (13 March 1974) | Patrick F. Hooks, Chairman | 15.6 16.11 16.12 *32.16 *33.21 33.311 34.13 |
| UD #10C-74 | American Federation of State, County and Municipal Employees, Montana Public Employees Association and Department of Social and Rehabilitation Services (16 December 1974) | Peter O. Maltese, Hearing Examiner | *09.31 *09.32 *09.33 15.6 *33.21 *33.323 33.393 34.13 *35.5214 35.82 |
| UD #11-74 | Montana Public Employees Association and Greenfield Irrigation District, Teton County (12 March 1974) | Patrick F. Hooks, Chairman | *15.6 33.21 33.333 34.13 |

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| UD #12-74 | American Federation of State, County and Municipal Employees and Helena School District No. 1 (12 March 1974) | Patrick F. Hooks, Chairman | 15.17 |
| UD #13-74 | Teamsters Local 45 and Cascade County Convalescent Hospital (8 April 1974) | Patrick F. Hooks, Chairman | 15.26 *15.27 16.43 33.21 33.45 34.34 |
| UD #14-74 | Montana Public Employees Association and Department of Natural Resources and Conservation (12 March 1974) | Patrick F. Hooks, Chairman | 33.382 34.13 |
| UD #15-74 | International Association of Machinists and Aerospace Workers, Local 231 and City of Helena (25 April 1974) | Patrick F. Hooks, Chairman | 32.16 34.12 |
| UD #16-74 | International Union of Operating Engineers, Montana Public Employees Association and Montana Highway Patrol Bureau, Department of Justice (8 April 1974) | Patrick F. Hooks, Chairman | 15.417 *32.15 32.16 |
| UD #17-74 | Montana Public Employees Association and Hamilton School District No. 3 (12 March 1974) | Patrick F. Hooks, Chairman | 15.171 33.21 |
| UD #18-74 | Montana State University On- Campus Employees and Montana State University (15 May 1974) | Patrick F. Hooks, Chairman | 15.19 *32.81 |
| UD #19-74 | Montana Public Employees Association and Missoula County High School (12 March 1974) | Patrick F. Hooks, Chairman | 15.17 |
| UD #20-74 | Teamsters Local 45 and Hill County (9 September 1974) | Peter O. Maltese, Hearing Examiner | 15.6 *35.5231 *35.541 |
| UD #21-74 | American Federation of State, County and Municipal Employees and Lewis and Clark County Welfare Department (5 May 1974) | Patrick F. Hooks, Chairman | 34.13 |
| UD #22-74 UD #23-74 UD #24-74 | Retail Clerks International Local 991 and City of Missoula (15 April 1974) | Patrick F. Hooks, Chairman | 15.33 |

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| UD #25-74 | American Federation of State, County and Municipal Employees and Missoula County Welfare Department (5 May 1974) | Patrick F. Hooks, Chairman | *16.22 *32.95 33.43 34.13 |
| UD #26-74 | American Federation of State, County and Municipal Employees and Department of Institutions, Swan River Youth Forest Camp (16 August 1974) | Patrick F. Hooks, Chairman | *16.32 *33.41 33.42 34.13 |
| UD #27-74 | Montana Public Employees Association and Park County School District No. 4 (22 April 1974) | Patrick F. Hooks, Chairman | 15.17 15.18 32.81 |
| UD #28-74 | Montana Public Employees Association and Yellowstone County (22 April 1974) | Patrick F. Hooks, Chairman | 15.6 |
| UD #29-74 | Montana Public Employees Association and Montana College of Mineral Science and Technology (23 May 1974) | Patrick F. Hooks, Chairman | *15.1 15.18 33.21 33.333 |
| UD #30-74 | American Federation of State, County and Municipal Employees and University of Montana (22 April 1974) | Patrick F. Hooks, Chairman | 15.17 15.18 *16.22 33.43 |
| UD #31-74 | Montana Public Employees Association and Income Tax Division, Department of Revenue (22 April 1974) | Patrick F. Hooks, Chairman | 34.13 |
| UD #32-74 | American Federation of State, County and Municipal Employees and City of Livingston (15 April 1974) | Patrick F. Hooks, Chairman | 15.6 |
| UD #33-74 | Montana Public Employees Association and Deer Lodge County Sheriff's Office (22 April 1974) | Patrick F. Hooks, Chairman | 15.413 |
| UD #35-74 | American Federation of State, County and Municipal Employees and Montana State University, Agricultural Experiment Station-- Miles City (22 April 1974) | Patrick F. Hooks, Chairman | 15.18 *33.322 |
| UD #36-74 | Montana Public Employees Association, American Federation of State, County and Municipal Employees, Joint Council of Teamsters Local 23 and Employment Security Division, Department of Labor and Industry (10 June 1974) | Patrick F. Hooks, Chairman | 32.61 *33.21 34.13 34.41 |

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| UD #37-74 UD #38-74 UD #41-74 | Laborers' Local 254 and City of Helena (13 May 1974) | Patrick F. Hooks, Chairman | 15.6 *31.46 |
| UD #39-74 | Teamsters Local 45 and Montana Highway Department (16 October 1974) | Patrick F. Hooks, Chairman | 15.6 *32.61 33.21 *33.313 *33.323 41.132 |
| UD #40-74 | Butte Teamsters Union, Local 2 and City of Butte (13 May 1974) | Patrick F. Hooks, Chairman | 15.33 |
| UD #41-74 | See UD #37-74. | | |
| UD #42-74 | Montana Public Employees Association, American Federation of State, County and Municipal Employees and Department of Social and Rehabilitation Services (17 June 1974) | Patrick F. Hooks, Chairman | 33.21 *33.323 33.34 34.13 |
| UD #43-74 | Teamsters Local 448 and City of Libby (10 June 1974) | Patrick F. Hooks, Chairman | 15.414 |
| UD #44-74 | American Federation of State, County and Municipal Employees and Department of Institutions, Mountain View School (16 Aug. 1974) | Patrick F. Hooks, Chairman | 15.123 15.17 15.18 |
| UD #45-74 UD #46-74 UD #47-74 | American Federation of State, County and Municipal Employees, Montana Public Employees Association and Department of Social and Rehabilitation Services (16 December 1974) | Patrick F. Hooks, Chairman | 34.13 |
| UD #49-74 | I.B.E.W. Local 122, Plumbers and Fitters Local 139 and City of Great Falls (23 January 1975) | Patrick F. Hooks, Chairman | *33.21 33.382 34.12 *36.222 |
| UD #50-74 | American Federation of State, County and Municipal Employees and Roosevelt County (18 Oct. 1974) | Patrick F. Hooks, Chairman | 15.6 33.21 34.13 |
| UD #51-74 | International Union of Operating Engineers Local 371, Montana Public Employees Association and Libby School District No. 4 (23 Jan. 1975) | Patrick F. Hooks, Chairman | 15.15 15.17 |
| UD #52-74 | Montana Public Employees Association and Great Falls City-County Planning Board (7 Nov. 1974) | Patrick F. Hooks, Chairman | 15.32 15.33 |

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| UD #53-74 | Montana Public Employees Association and Department of Fish and Game (7 November 1974) | Patrick F. Hooks, Chairman | *15.8 33.21 33.323 33.332 34.13 |
| UD #54-74 | Montana Federation of Teachers and Montana Childrens Center, Twin Bridges (23 January 1975) | Patrick F. Hooks, Chairman | 15.121 16.4 *33.45 |
| UD #55S-74 | Montana Federation of Teachers, North Central Montana Federation of Teachers, American Association of University Professors, Northern Montana College Chapter, American Association of University Professors, Montana State Conference and Northern Montana College (11 March 1975) | Peter O. Maltese, Hearing Examiner | *15.122 *33.21 33.393 |
| UD #56S-74 | Montana Education Association and Western Montana College (3 April 1975) | | *15.122 32.18 33.21 34.16 34.34 |
| UD #57-74 | International Union of Operating Engineers, Local 400 and Stillwater County (27 Nov. 1974) | Patrick F. Hooks, Chairman | 15.6 |
| UD #58-74 | American Federation of State, County and Municipal Employees, Montana Public Employees Association and Department of Social and Rehabilitation Services (4 March 1976) | Edward Kennedy, Hearing Examiner | 34.13 |
| UD #60S-74 | Montana Federation of Teachers, Montana Education Association, Dawson College Faculty Senate, and Dawson College (1 April 1975) | Peter O. Maltese, Hearing Examiner | 15.122 15.123 15.125 15.127 16.32 34.34 |
| UD #61-74 | Teamsters Local 45 and Havre Public Schools (14 February 1975) | Patrick F. Hooks, Chairman | 15.17 *16.32 33.42 |
| UD #62-74 | American Federation of State, County and Municipal Employees and Northern Montana College (11 January 1975) | Patrick F. Hooks, Chairman | 15.18 34.32 |
| UD #63S-74 | Montana Public Employees Association and Warm Springs State Hospital, Department of Institutions (3 March 1975) | George Massman, Hearing Examiner | 15.23 *33.322 |

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| UD #64S-74 | Montana Public Employees Association, American Federation of State, County and Municipal Employees and Montana State University (10 March 1975) | George Massman, Hearing Examiner | 15.17 15.18 *33.1 34.32 |
| UD #65C-74 | Bozeman Police Protective Association and City of Bozeman (23 January 1975) | Patrick F. Hooks, Chairman | 15.414 33.21 |
| UD #66S-74 | Montana Education Association, Eastern Montana College Faculty Bargaining Coalition and Eastern Montana College (6 May 1975) | Peter O. Maltese, Hearing Examiner | *15.1 15.122 *16.32 33.21 *33.336 *33.343 33.42 34.13 |
| UD #67S-74 | Montana Federation of Teachers, American Association of University Professors, Montana Education Association, Thomas P. Huff, Faculty of the University Montana School of Law and University of Montana (15 Dec. 1975) | Emmett O'Neill, Hearing Examiner | 15.111 15.122 15.125 33.313 *33.343 *33.41 |
| UD #1-75 | Montana Federation of Teachers and Boulder River School and Hospital, Department of Institutions (4 April 1975) | George H. Massman, Hearing Examiner | 15.121 33.21 33.333 |
| UD #6-75 | Montana Public Employees Association and Department of Agriculture (17 June 1975) | George H. Massman, Hearing Examiner | 33.43 34.13 |
| UD #19-75 | Montana Federation of Teachers, Montana Education Association and Helena School District No. 1 (4 December 1975) | Ray Saeman, Hearing Examiner | *07.131 15.121 *21.7 *32.13 *32.141 32.81 *32.91 *36.123 *37.1 |
| UD #21-75 | Butte Teamsters Union, Local 2 and Silver Bow County General Hospital (24 November 1975) | | 15.24 |
| UD #22-75 | Kalispell Federation of Teachers, Kalispell Education Association, Affiliated with Montana Education Association and Flathead High School District No. 5 (5 November 1975) | Robert R. Jensen, Administrator | 15.121 33.313 |

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| | Kalispell Federation of Teachers v. Flathead School District and Kalispell Education Association, 11th Judicial District, Cause #25413 (17 February 1976). | Robert S. Keller, District Judge | *01.1 03.31 |
| UD #26-75 | Victor Federation of Teachers and Victor Public Schools (7 November 1975) | Robert R. Jensen, Administrator | 15.121 32.141 |
| UD #27-75 | Lambert Teachers Organization and Lambert Public Schools, District No. 4 and 86 (12 November 1975) | Robert R. Jensen, Administrator | 32.141 *32.81 |
| UD #31-75 | Montana Public Employees Association and Missoula City- County Health Department (30 January 1976) | James Adams, Hearing Examiner | 34.13 |
| UD #33-75 | Missoula Teamsters Union, Local 448 and Deer Lodge School District No. 1 (26 February 1976) | Ray Saeman, Hearing Examiner | 15.15 15.17 |
| UD #34-75 | Retail Clerks Union, Local 57 and Great Falls International Airport Authority (15 February 1977) | Ray Saeman, Hearing Examiner | 15.416 |
| UD #36-75 | Billings Police Association and City of Billings (4 June 1976) | James Adams, Hearing Examiner | 15.414 *16.32 16.45 *31.46 33.323 33.42 33.45 |
| UD #42-75 | Amalgamated Meat Cutters, American Federation of State, County and Municipal Employees and Montana State Prison, Department of Institutions (17 February 1976) | Edward Kennedy, Hearing Examiner | *33.313 34.12 |
| UD #8-76 | Dupuyer Education Association and Dupuyer School District No. 2 (18 June 1976) | Robert R. Jensen, Administrator | 15.121 *35.311 |
| UD #11-76 | Montana State University Chapter of the American Association of University Professors, Montana Society of Engineers and Montana State University (8 April 1977) | Jerry L. Painter, Hearing Examiner | *03.22 15.122 *33.336 33.34 33.343 *33.393 |

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| | Montana Society of Engineers v. Board of Personnel Appeals, Board of Regents of Higher Education, Montana State University and M.S.U. Chapter of the American Association of University Professors, 1st Judicial District, Cause #41317 (7 March 1978) and Cause #41320 (29 November 1977). | Gordon R. Bennett, District Judge | 03.22 *81.31 *81.491 |
| UD #12-76 | Montana Council No. 9, American Federation of State, County and Municipal Employees and Pine Hills School, Department of Institutions (5 August 1977) | Edward Kennedy, Hearing Examiner | 15.17 15.18 |
| UD #13-76 | Montana Public Employees Association and Great Falls Public Schools, School District No. 1, Cascade County (4 Aug. 1976) | Edward Kennedy, Hearing Examiner | 15.134 15.14 15.18 |
| UD #14-76 | Montana Education Association, Montana Federation of Teachers and Superintendent of Public Instruction (5 August 1976) | Donna K. Davis, Hearing Examiner | 15.121 15.18 |
| UD #15-76 | Montana Public Employees Association, Personnel Division, Department of Administration and Boulder River School and Hospital, Department of Institutions (28 February 1977) | Edward Kennedy, Hearing Examiner | 15.233 33.3 |
| UD #18-76 | Teamsters Local 45, Montana Public Employees Association and City of Great Falls (5 August 1977) | Jerry L. Painter, Hearing Examiner | 15.33 16.22 *16.32 33.3 33.42 *33.43 34.15 *35.323 35.37 *35.533 *35.81 |
| | Great Falls v. Board of Personnel Appeals, Teamsters Local 45 and Montana Public Employees Association, 8th Judicial District, Cause #83051C (10 Nov. 1977). | Joel G. Roth, District Judge | 81.526 |
| UD #24-76 | American Federation of State, County and Municipal Employees and City of Helena (1 April 1977) | Edward Kennedy, Hearing Examiner | 15.414 *16.32 33.42 |

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| UD #5-77 | Montana Public Employees Association and Yellowstone County Welfare Department (27 June 1977) | Barry F. Smith, Hearing Examiner | 15.6 |
| | | | 32.18 |
| | | | 34.13 |
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| | | | 35.322 |
| | | | *35.323 |
| | | | 35.533 |
| UD #6-77 | Montana Public Employees Association and Center for the Aged, Department of Institutions (17 January 1970) | Robert R. Jensen, Administrator | *35.81 |
| | | | 15.2 |
| | | | 15.212 |
| | | | 16.22 |
| | | | 32.18 |
| | | | 33.43 |
| | | | 35.372 |
| UD #8-77 | Teamsters Local 448 and Columbia Falls School District No. 6 (22 August 1977) | Jack H. Calhoun, Hearing Examiner | 36.123 |
| | | | 15.171 |
| | | | 15.172 |
| | | | 16.32 |
| | | | *33.3 |
| | | | *33.393 |
| | | | 33.42 |
| UD #11-77 | Montana Alcoholism and Drug Abuse Counselors, Federation of Teachers, MFT and Galen State Hospital, Department of Institutions (26 October 1977) | Kathryn Walker, Hearing Examiner | 15.27 |
| | | | 32.142 |
| | | | 32.81 |
| | | | 32.93 |
| | | | 33.22 |
| | | | *33.321 |
| | | | 35.21 |
| | | | 35.330 |
| | | | 36.115 |
| UD #17-77 | International Union of Operating Engineers, Local 400 and City of Helena (15 November 1977) | Linda Skaar, Hearing Examiner | 36.215 |
| | | | *36.222 |
| | | | 36.223 |
| | | | 15.6 |
| | | | 16.32 |
| UD #18-77 | Montana Public Employees Association, American Federation of State, County and Municipal Employees, Laborers' International Union of North America and Helena School District No. 1 (28 February 1978) | Jack H. Calhoun, Hearing Examiner | 33.21 |
| | | | 33.42 |
| | | | 15.18 |
| | | | *21.3 |
| | | | 33.1 |
| | | | *33.21 |
| | | | 33.3 |
| | | | *33.34 |
| | | | *33.343 |
| | | | 34.15 |
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| UD #21-77 | University Teachers Union, Local 119, MFT, University of Montana Chapter of the American Association of University Professors, Montana Education Association and University of Montana (5 January 1978) | Linda Skaar, Hearing Examiner | 09.413 |
| | | | 15.111 |
| | | | 15.122 |
| | | | 15.125 |
| | | | *16.32 |
| | | | 16.43 |
| | | | 33.34 |
| | | | 33.42 |
| | | | 33.45 |
| | | | 35.315 |
| | | | 35.321 |
| | | | 35.329 |
| | | | 35.372 |
| UD #22-77 | Montana Public Employees Association and Office of Public Instruction (27 February 1979) | Rick D'Hooze, Hearing Examiner | 15.1 |
| | | | 16.1 |
| | | | 16.2 |
| | | | 16.22 |
| | | | 16.3 |
| | | | 16.32 |
| | | | 16.42 |
| | | | 32.18 |
| | | | 32.96 |
| | | | *32.97 |
| | | | 33.41 |
| | | | 33.42 |
| | | | 33.43 |
| | | | 34.13 |
| | | | 34.21 |
| | | | 35.14 |
| | | | 35.37 |
| | | | 36.214 |
| | Superintendent of Public Instruction v. Board of Personnel Appeals and Montana Public Employees Association, 1st Judicial District, Cause #42714 (26 Sept. 1978) | Gordon R. Bennett, District Judge | 81.333 |
| | | | 81.5090 |
| UD #18-78 | Billings School Bus Drivers Association, Teamsters Local 190 and Billings School District No. 2m and KAL Leasing, Inc. (9 April 1979) | Jerry L. Painter, Hearing Examiner | *01.1 |
| | | | *01.131 |
| | | | *11.11 |
| | | | *11.12 |
| | | | *15.15 |
| | | | 33.1 |

| | | | |
|-----------|--|-----------------------------------|---------|
| UD #21-78 | Montana Public Employees Association and Division of Workers' Compensation (28 August 1978) | | 32.18 |
| | | | 34.13 |
| | | | 35.14 |
| | | | 35.330 |
| | | | 35.533 |
| | | | 35.537 |
| | | | 72.114 |
| | | | 72.18 |
| | Montana Public Employees Association v. State Labor Relations Bureau, Department of Administration, Workers' Compensation Division and Board of Personnel Appeals. 1st Judicial District, Cause #42916 (26 Sept. 1978) | Gordon R. Bennett, District Judge | 35.61 |
| UD #22-78 | American Federation of State, County and Municipal Employees and City of Livingston (20 December 1978) | Linda Skaar, Hearing Examiner | 15.414 |
| | | | *16.32 |
| | | | 33.21 |
| | | | 33.42 |
| UD #24-78 | Teamsters Local 45 and Liberty County Nursing Home (23 May 1979) | Stan Gerke, Hearing Examiner | 15.212 |
| | | | 15.233 |
| | | | 16.32 |
| | | | *16.43 |
| | | | *16.44 |
| | | | 33.21 |
| | | | 33.3 |
| | | | *33.31 |
| | | | *33.323 |
| | | | 33.34 |
| | | | 33.42 |
| | | | 33.45 |
| UD #1-79 | Butte Teamsters Union, Local 2, Montana Public Employees Association and Butte-Silver Bow Government (4 October 1979) | | 15.261 |
| | | | 15.33 |
| | | | 15.7 |
| | | | 16.1 |
| | | | 16.2 |
| | | | 16.22 |
| | | | 16.3 |
| | | | 16.32 |
| | | | 16.41 |
| | | | 33.1 |
| | | | 33.41 |
| | | | 33.42 |
| | | | 33.43 |
| | | | 33.45 |
| | | | 34.15 |
| | | | 37.5 |
| | | | *43.7 |

UNIT DETERMINATION CASES

| | | | |
|----------|---|-----------------------------------|----------|
| UD #4-79 | Billings Police Sergeants and Lieutenants' Association and City of Billings | Robert R. Jensen, Administrator | 15.414 |
| | | | 16.1 |
| | | | 16.22 |
| | | | 16.3 |
| | | | 33.21 |
| | | | *33.31 |
| | | | 33.41 |
| | | | 33.42 |
| | | | 33.43 |
| UD #6-79 | Montana Public Employees Association and Lone Rock School District No. 13 (1 June 1979) | Kathryn Walker, Hearing Examiner | 09.411 |
| | | | 09.413 |
| | | | 15.15 |
| | | | 15.17 |
| | | | 15.18 |
| | | | 33.21 |
| | | | *33.311 |
| | | | *33.313 |
| | | | *33.34 |
| UD #7-79 | American Federation of State, County and Municipal Employees and City of Miles City (10 September 1979) | Stan Gerke, Hearing Examiner | 15.414 |
| | | | *16.32 |
| | | | *32.221 |
| | | | 32.227 |
| | | | 32.83 |
| | | | 33.21 |
| | | | *33.31 |
| | | | 33.42 |
| | | | *35.522 |
| | | | *37.1 |
| | | | 37.5 |
| | Miles City v. AFSCME and Board of Personnel Appeals, 16th Judicial District, Cause #16878 (27 May 1980) | A.B. Martin, District Judge | *81.112 |
| | | | 81.333 |
| | | | 81.491 |
| | | | 81.493 |
| | | | *81.5090 |
| | | | 81.526 |
| UD #9-79 | Pioneer Special Services, MFT and Deer Lodge Elementary School District No. 1 (7 November 1979) | Jack H. Calhoun, Hearing Examiner | 15.12 |
| | | | 15.121 |
| | | | 15.124 |
| | | | *32.51 |
| | | | 33.21 |
| | | | *33.34 |
| | | | 37.3 |

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| UD #18-79 | Montana Public Employees Association and Montana Department of Labor and Industry (22 October 1979) | Jack H. Calhoun, Hearing Examiner | 15.7 *16.2 16.4 16.43 33.21 33.341 *33.343 *33.35 33.43 34.13 34.34 *35.315 *35.321 |
| UD #24-79 | American Federation of State, County and Municipal Employees and Havre School District No. 16-A (28 February 1980) | Kathryn Walker, Hearing Examiner | 15.18 *16.21 *16.22 33.21 33.43 34.15 |
| UD #26-79 | American Federation of State, County and Municipal Employees and City of Hamilton (21 May 1980) | Stan Gerke, Hearing Examiner | 15.414 *15.45 16.32 *16.45 33.21 33.42 33.45 34.33 34.34 34.35 |
| | City of Hamilton v. Board of Personnel Appeals, 4th Judicial District, Cause #DV-80-233 (25 June 1980) | John S. Henson, District Judge | 81.524 |
| UD #27-79 | Montana Public Employees Association and Park County Welfare Department, Department of Social and Rehabilitation Services (8 April 1980) | Linda Skaar, Hearing Examiner | 15.7 *16.22 33.21 33.43 34.13 |
| UD #29-79 | Joint Council of Teamsters and Local Union No. 2 and Flathead Valley Community College (7 April 1980) | Jack H. Calhoun, Hearing Examiner | 15.17 15.171 *16.32 33.21 33.42 34.18 |
| UD #32-79 | Flathead County Sheriff's Association and Flathead County Sheriff's Department (3 April 1980) | Jack H. Calhoun, Hearing Examiner | 15.413 33.42 |

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| UD #1-80 | Montana Federation of Teachers, Montana Public Employees Association and Kalispell School District No. 5 (12 May 1980) | Jack H. Calhoun, Hearing Examiner | 15.14 |
| | | | 15.172 |
| | | | 15.18 |
| | | | *16.22 |
| | | | *16.32 |
| | | | 32.6 |
| | | | *33.323 |
| | | | 33.34 |
| UD #2-80 | Laborers' International Union of North America and City of Helena (19 June 1980) | Kathryn Walker, Hearing Examiner | 15.6 |
| | | | 16.43 |
| | | | *16.44 |
| | | | *16.46 |
| | | | *33.1 |
| | | | *33.34 |
| | | | |
| | | | |
| UD #5-80 | Montana Public Employees Association and Eastmont Human Services Center, Department of Institutions (30 October 1980) | Stan Gerke, Hearing Examiner | 04.6 |
| | | | 09.411 |
| | | | 15.251 |
| | | | 33.22 |
| UD #7-80 UD #8-80 | Montana Public Employees Association and Yellowstone County School District No. 2 (9 January 1981) | Jack H. Calhoun, Hearing Examiner | *33.323 |
| | | | 15.172 |
| | | | 15.18 |
| | | | *16.22 |
| | | | *16.43 |
| UD #14-80 | Butte Teamsters Union, Local 2 and City of Missoula (2 September 1980) | Elizabeth L. Griffing, Hearing Examiner | *33.43 |
| | | | 33.45 |
| | | | 09.411 |
| | | | 15.7 |
| | | | *16.1 |
| | | | 16.11 |
| | | | *16.12 |
| UD #23-80 | Montana Public Employees Association and School District No. 7, Columbia Falls (30 April 1981) | Linda Skaar, Hearing Examiner | *16.32 |
| | | | 33.42 |
| | | | 15.15 |
| | | | 15.17 |
| UD #1-81 | Great Falls Child Development Federation No. 4090, AFT and Opportunities, Inc., Great Falls (6 October 1981) | Robert R. Jensen, Administrator | |
| | | | *01.13 |
| UD #6-81 | Montana Education Association and Roosevelt County School District No. 9 and 9B (4 September 1981) | Linda Skaar, Hearing Examiner | 15.171 |
| | | | *33.34 |
| | | | |
| UD #12-81 | International Association of Machinists and State of Montana (4 September 1981) | Rick D'Hooge, Hearing Examiner | 16.32 |
| | | | *33.34 |
| | | | *33.35 |
| | | | 33.42 |

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| UD #22-81 | Montana Education Association and Billings Independent School District No. 52 (8 March 1982) | Rick D'Hooge, Hearing Examiner | 15.121 *16.32 33.42. |
| UD #1-82 | Montana Public Employees Association, Inc. and Flathead County, County-Wide Administrative Board (29 October 1982) | Kathryn Walker, Hearing Examiner | 15.32 16.22 *33.21 *33.32 *33.34 33.43 |
| UD #8-83 | Montana Public Employees Association and City of Great Falls (1 March 1984) | Linda Skaar, Hearing Examiner | 15.33 *16.21 16.22 16.31 *16.32 *33.43 |
| UD #9-83 | Montana Association of Fish and Wildlife Biologists and Department of Fish, Wildlife and Parks (1 March 1984) | Jack H. Calhoun, Hearing Examiner | 15.8 16.11 16.12 *16.32 33.3 33.336 *33.34 33.41 33.42 |
| UD #6-84 | Teamsters Local 45 and Great Falls Transit District (30 January 1985) | Linda Skaar, Hearing Examiner | *01.13 *11.12 *11.13 15.51 15.53 32.83 |
| UD #7-84 | Montana Public Employees Association and Department of Institutions, Pine Hills School (5 May 1984) | Robert R. Jensen, Administrator | 15.134 15.17 15.18 *35.515 *35.81 |

APPENDIX II

ELECTION AND CERTIFICATION CHALLENGES

ELECTION AND CERTIFICATION CHALLENGES

* Denotes Excerpt in "Annotations of Montana Cases" Section

ELECTION CHALLENGES

CITATIONS

| | | | |
|------------|--|---|---|
| EC #6-74 | Teamsters Local 45 v. Hill County (9 September 1974) | Peter O. Maltese, Hearing Examiner | 15.6 *35.45 *35.5 *35.53 35.82 |
| UD #10C-74 | American Federation of State, County and Municipal Employees v. Montana Public Employees Association (5 December 1974) | Peter O. Maltese, Hearing Examiner | *09.31 *09.32 *09.33 15.6 *33.21 *33.323 33.393 34.13 *35.5214 35.82 |
| ULP #10-74 | Laborers Local 1334 v. Montana Public Employees Association (22 May 1975) | Jerome T. Loendorf, Hearing Examiner | 35.5214 *72.2 *72.23 |
| UD #20-74 | Teamsters Local 45 and Hill County (9 September 1974) | Peter O. Maltese, Hearing Examiner | 15.6 *35.5231 *35.541 |
| UM #5-76 | Committee for Freedom of Determination and Montana Public Association v. the Montana University System, Board of Regents (26 May 1976) | Jerry L. Painter, Hearing Examiner | *24.221 *32.13 *32.141 32.81 *35.325 *35.42 *35.5 *35.5218 *35.56 *37.15 |

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| UD #18-76 | Teamsters Local 45; Montana Public Employees Association; and City of Great Falls (5 August 1977) | Jerry L. Painter, Hearing Examiner | 15.33 |
| | | | 16.22 |
| | | | *16.32 |
| | | | 33.3 |
| | | | 33.42 |
| | | | *33.43 |
| | | | 34.15 |
| | | | *35.323 |
| | | | 35.37 |
| | | | *35.533 |
| | | | *35.81 |
| | Great Falls v. Board of Personnel Appeals, Teamsters Local 45 and Montana Public Employees Association, 8th Judicial District, Cause #83051C (10 Nov. 1977). | Joel G. Roth, District Judge | 81.526 |
| UD #5-77 | Montana Public Employees Association and Yellowstone County Welfare Department (27 June 1977) | Barry F. Smith, Hearing Examiner | 15.6 |
| | | | 32.18 |
| | | | 34.13 |
| | | | 35.14 |
| | | | 35.322 |
| | | | *35.323 |
| ULP #36-77 See DC #9-77 | Retail Clerks Union Local 991 v. University of Montana (12 June 1978) | Jeff Andrews, Hearing Examiner | 35.533 |
| | | | 35.534 |
| | | | 37.5 |
| | | | 72.22 |
| DC #9-77 See ULP #36-77 | Montana Public Employees Association, Retail Clerks Local 991 and University of Montana (16 June 1978) | Jeff Andrews, Hearing Examiner | *35.37 |
| | | | 35.44 |
| | | | 35.511 |
| | | | 35.513 |
| | | | 35.5212 |
| | | | *35.5214 |
| | | | 35.5216 |
| DC #5-78 See ULP #20-78 | Bigfork Teachers Association, Bigfork Area Education Association and Flathead and Lake County School District No. 38 (20 June 1979) | Robert R. Jensen, Administrator | 35.513 |
| | | | 35.61 |
| | | | 37.5 |
| UD #21-78 | Montana Public Employees Association and Division of Workers' Compensation (28 August 1978) | | 32.18 |
| | | | 34.13 |
| | | | 35.14 |
| | | | 35.330 |
| | | | 35.533 |
| | | | 35.537 |
| | | | 72.114 |
| | | | 72.18 |

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| DC #10-79 | Teamsters Local 190 and City of Billings (2 August 1979) | Jerry L. Painter, Hearing Examiner | *09.32 15.33 *35.515 *35.522 *35.53 35.82 |
| DC #11-79 | Yellowstone County and Joint Council of Teamsters, Local 2 and Local 190 (16 August 1979) | Jack H. Calhoun, Hearing Examiner | *16.3 35.37 *37.11 *37.12 37.3 *37.5 37.8 |
| DC #17-79 | Montana Public Employees Association and American Federation of State, County and Municipal Employees (9 October 1979) | Barry F. Smith, Hearing Examiner | 15.31 *21.2 *35.5214 *35.5216 35.82 |
| DC #8-81 DC #11-81 | Montana University System and International Brotherhood of Painters and Allied Trades, Locals 1023, 851 or 167 and Montana Maintenance Painters Local 11-A (24 November 1981) | Kathryn Walker, Hearing Examiner | *31.46 *34.39 *35.312 35.315 *35.321 35.37 *37.11 |
| | Delger and Haniszewski v. Board of Personnel Appeals, Montana State University, and IBPAT Locals 1023 and 851, Maintenance Painters and Allied Trades, Local 11-A, 1st Judicial District, Cause #47869 (5 Oct. 1982). | Peter G. Meloy, District Judge | *09.21 *22.2 31.46 *34.39 *37.1 81.521 |
| DC #5-82 | Butte Teamsters Union, Local 2; Amalgamated Transit Workers Local 381; and Butte School District No. 1, Butte-Silver Bow (30 April 1982) | Kathryn Walker, Investigator | 15.511 15.53 *35.8 *35.81 |
| DC #4-83 | Montana Federation of Teachers, and Western Montana College, Board of Regents of Higher Education, Montana University System and Western Montana College Unit of the Montana Education Association (30 June 1983) | Linda Skaar, Hearing Examiner | *09.113 *09.62 *22.71 *35.515 *37.14 37.3 |
| UD #7-84 | Montana Public Employees Association and Department of Institutions, Pine Hills School (5 May 1984) | Robert R. Jensen, Administrator | 15.134 15.17 15.18 *35.515 *35.81 |

CERTIFICATION CHALLENGES

CC#2-81

Certain Members of Local 1023,
International Brotherhood of
Painters and Allied Trades v.
Local 1023, International
Brotherhood of Painters and Allied
Trades and the Public Employees
Craft Council (8 July 1982)

| | |
|----------|--------|
| Jack H. | *22.52 |
| Calhoun, | *22.61 |
| Hearing | *22.7 |
| Examiner | 32.81 |
| | *32.9 |
| | *32.91 |
| | *32.92 |

Andresen, et al. v. Board of
Personnel Appeals,
1st Judicial District,
Cause #48521
(29 August 1983)

| | |
|-----------|----------|
| Gordon R. | *03.22 |
| Bennett, | *32.9 |
| District | *32.91 |
| Judge | *37.1 |
| | *81.493 |
| | *81.5091 |
| | *81.523 |

*81.523

APPENDIX III

UNIT MODIFICATIONS AND CLARIFICATIONS

UNIT MODIFICATIONS AND CLARIFICATIONS

* Denotes Excerpt in "Annotations of Montana Cases" Section

| | | | CITATIONS |
|----------|---|---|--|
| UM #1-75 | Billings Education Association v. Billings School District No. 2 and High School District (27 January 1977) | Peter O. Maltese, Hearing Examiner | *03.21 15.125 15.128 16.43 33.333 33.335 *33.34 34.31 *35.81 *36.123 |
| UM #2-75 | Cashier and Assistant Cashier, Livingston Water Department, American Federation of State, County and Municipal Employees v. City of Livingston (19 March 1976) | Ray Saeman, Hearing Examiner | 15.63 16.1 *16.11 *16.12 22.41 *31. *33.2 *33.21 *33.311 *33.34 *33.393 *36.114 *36.12 36.121 *36.212 *36.214 |
| UM #5-76 | Committee for Freedom of Determination and Montana Public Employees Association v. the Montana University System, Board of Regents (26 May 1976) | Jerry L. Painter, Hearing Examiner | *24.221 *32.13 *32.141 32.81 *35.325 *35.42 *35.5 *35.5218 *35.56 *37.15 |
| UC #1-77 | Billings Firefighters Local 521 v. City of Billings (26 March 1979) | Kathryn Walker, Hearing Examiner | 15.43 *16.1 *16.11 *16.12 16.31 *16.32 *33.31 *33.311 *33.35 33.41 *33.42 *36.123 |

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| | Board of Personnel Appeals and Billings Firefighters Local 521 v. Billings, Butte Teamsters Local 2, United Food & Commercial Workers Locals 4R, 8, 33 & 1981, and Montana State Council of Professional Firefighters, Montana Supreme Court, 200 M 421, 651 P2d 627, 39 St. Rep. 1844 (1982). | Frank B. Morrison, Jr., Justice | *03.22 *16.3 *33.21 *33.313 33.35 *81.491 *81.493 *81.50 *81.502 *81.503 *81.504 *81.505 |
| UM #3-77 | Montana Federation of Teachers, Montana Education Association and Helena School District No. 1 | Ray Saeman, Hearing Examiner | 33.323 37.11 |
| UC #3-79 | Department of Administration, State Labor Relations Bureau v. Montana Nurses Association (2 June 1980) | Linda Skaar, Hearing Examiner | 15.211 16.31 *16.32 *33.42 *36.123 |
| UC #4-79 | Lewis and Clark County v. Montana Public Employees Association (3 April 1980) | Jack H. Calhoun, Hearing Examiner | *11.11 *11.12 *11.32 *11.4 *11.7 *15.01 15.32 *16.2 *16.22 *21. *21.2 *33.21 *33.336 *33.341 *36.123 *41.2 |
| UC #6-79 | State Labor Relations Bureau, Department of Agriculture and Montana Public Employees Association (9 March 1981) | Linda Skaar, Hearing Examiner | 15.31 *16.22 33.43 |
| UC #8-79 | Western Montana College Unit of the Montana Education Association v. Montana University System (4 September 1981) | Kathryn Walker, Hearing Examiner | 15.122 15.127 *33.21 *33.34 36.121 |
| UC #4-80 | City of Billings, Teamsters Local 190 and International Association of Firefighters Local 521 (2 September 1980) | Jack H. Calhoun, Hearing Examiner | 15.33 15.414 15.43 *33.3 *33.34 *36.111 36.121 |

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| UC #6-80 | Department of Administration, Labor Relations Bureau v. Montana Public Employees Association (1 September 1981) | Jack H. Calhoun, Hearing Examiner | 15.31 *16.32 33.42 *36.123 |
| | Montana Public Employees Association v. Department of Administration, Labor Relations Bureau and Board of Personnel Appeals (5 August 1985) Supreme Court, (1985) 42 St. Rep. 1157 | William E. Hunt, Sr., Justice | *33.313 *33.41 *36.123 *81.46 *81.48 |
| UC #7-80 | Department of Administration, Labor Relations Bureau v. Montana Public Employees Association (17 November 1981) | Jack H. Calhoun, Hearing Examiner | 15.5 16.31 16.32 *33.42 *36.123 |
| UD #1-81 | AFSCME and City of Whitefish (8 July 1982) | Rick D'Hooqe, Hearing Examiner | 15.6 32.81 *36.114 *36.121 *36.21 *36.34 42.21 43.8 |
| UC #6-82 | Laurel Education Association v. Laurel School Districts No.7 and 7-70 (1 April 1983) | Stan Gerke, Hearing Examiner | 15.125 16.31 *16.32 36.121 |
| UC #1-83 | Lewis and Clark County v. Montana Public Employees Association (16 Aug. 1984) | James E. Gardner, Hearing Examiner | *36.112 |
| UC #2-83 | Board of Trustees, School District No. 1, Butte-Silver Bow v. Butte Teamsters Union Local 2 (14 March 1984) | Jack H. Calhoun, Hearing Examiner | *15.113 *21. *33.21 *33.313 *33.35 33.41 *36.1 *36.115 *36.123 |
| UC #3-83 | AFSCME and City of Kalispell (7 May 1984) | Kathryn Walker, Hearing Examiner | 15.33 15.6 *16.11 16.12 16.32 33.42 |
| UC #5-83 | AFSCME and City of Whitefish (19 June 1984) | Kathryn Walker, Hearing Examiner | 15.6 *16.32 *31.46 *36.121 |

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| UC #2-84 | State of Montana Eastmont Human Services Center v. Montana Public Employees Association (14 August 1985) | Linda Skaar, Hearing Examiner | 15.233 |
| | | | 15.24 |
| | | | 15.27 |
| | | | 16.31 |
| | | | *16.32 |
| | | | 32.81 |
| | | | 33.42 |
| | | | 36.121 |

APPENDIX IV
DECERTIFICATIONS

DECERTIFICATIONS

* Denotes Excerpt in "Annotations of Montana Cases" Section

| | | | CITATIONS |
|----------|--|--|--|
| DC #2-75 | Teamsters Local 53, AFSCME and Department of Highways (19 Sept. 1975) | Cordell Brown, Hearing Examiner | 33.323 37.11 41.132 |
| DC #5-75 | Teamsters Local 45, AFSCME and Department of Highways (15 December 1975) | Neil E. Ugrin, Hearing Examiner | 15.6 *22.1 22.4 *33.323 *33.342 *34.12 34.13 34.18 *37.11 37.3 *37.8 41.132 |
| | Teamsters Local 23, affiliated with the Public Employees Craft Council v. Department of Highways, AFSCME, and Board of Personnel Appeals, 9th Judicial District, Cause #11592 and Cause #8835 (24 April 1979) | R.D. McPhillips, District Judge | *22.4 *31.3 *31.46 *33.342 *34.12 34.13 34.18 41.132 *43.7 *43.8 *46.31 *47.223 *47.55 *47.56 *47.83 |
| DC #6-76 | Kalispell Federation of Teachers Montana Education Association, and Kalispell Public Schools | Jerry Painter, Hearing Examiner | 33.323 37.11 |
| | Kalispell Federation of Teachers v. Board of Personnel Appeals and Kalispell Education Association, 11th Judicial District, Cause #27317 (14 July 1978). | J.M. Salansky, District Judge | 81.521 |

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|--------------------------------|---|--|--|
| DC #8-77 | Petition of Robert N. Noyes Seeking Decertification of Eastern Montana College Faculty Bargaining Coalition, MFT (25 November 1977) | Brent Cromley, Chairman | *01.29 *22.6 *37.15 37.16 37.5 74.12 |
| See ULPs #14-77 & #16-78 | | | |
| DC #9-77 | Montana Public Employees Association, Retail Clerks Local 991 and University of Montana (16 June 1978) | Jeff Andrews, Hearing Examiner | *35.37 35.44 35.511 35.513 35.5212 *35.5214 35.5216 35.534 *35.61 |
| See ULP #36-77 | | | |
| DC #12-77 | Montana State Council 9, Local 2033 AFSCME (27 June 1977) | Jerry Painter, Hearing Examiner | 33.323 37.11 |
| DC #22-77 | Montana Public Employees, Inc. and City of Butte or Butte-Silver Bow Consolidated Government (11 May 1978) | Rick D'Hooze, Hearing Examiner | 15.32 15.33 34.21 37.5 |
| | Montana Public Employees Association v. Board of Personnel Appeals, Government of Butte- Silver Bow, and Butte Teamsters Local 2, 1st Judicial District, Cause #42648 (14 Nov. 1978). | Gordon R. Bennett, District Judge | *09.613 *09.62 *21.7 *32.1 *33.1 *34.21 *37.11 *37.2 *81.505 *81.506 81.522 *81.523 |
| DC #4-78 | In the Matter of Lewis and Clark County's Motion to Dismiss the Petition for Decertification Filed by AFSCME against the Montana Public Employees Association Representing Employees in the Sheriff's Office (16 June 1978) | Linda Skaar, Hearing Examiner | 33.323 37.11 |
| | Lewis and Clark County v. Board of Personnel Appeals and AFSCME, 1st Judicial District, Cause #43012 (5 January 1979). | Gordon R. Bennett District Judge | 81.521 |
| DC #5-78 | Bigfork Teachers Association, Bigfork Area Education Association and Flathead and Lake County School District No. 38 (20 June 1979) | Robert R. Jensen, Administrator | 35.513 35.61 37.5 |
| See ULP #20-78 | | | |

DECERTIFICATIONS

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| | | | |
|------------------------|--|---|--|
| DC #6-78 | Montana Council No. 9, AFSCME and City of Lewistown (19 April 1979) | Stan Gerke, Hearing Examiner | 15.414 *16.45 *33.21 *37.12 37.5 |
| DC #3-79 | Montana Federation of Teachers, Great Falls School District No. 1 and Vocational-Technical Education Center and Great Falls Education Association | | 33.323 37.11 |
| DC #4-79 | Montana Federation of Teachers, Helena School District No. 1 and Helena Vo-Tech Center and Helena Education Association | | 33.323 37.11 |
| DC #10-79 | Teamsters Local 190 and City of Billings (2 August 1979) | Jerry L. Painter, Hearing Examiner | *09.32 15.33 *35.515 *35.522 *35.53 35.82 |
| DC #11-79 | Yellowstone County and Joint Council of Teamsters, Local 2 and Local 190 (16 August 1979) | Jack H. Calhoun, Hearing Examiner | *16.3 35.37 *37.11 *37.12 37.3 *37.5 37.8 |
| DC #15-79 DC #16-79 | State of Montana and Montana Public Employees Association, Inc. (22 October 1979) | Stan Gerke, Hearing Examiner | *32.141 34.15 *37.11 *37.13 *37.15 37.5 |
| DC #17-79 | Montana Public Employees Association and American Federation of State, County and Municipal Employees (9 October 1979) | Barry F. Smith, Hearing Examiner | 15.31 *21.2 *35.5214 *35.5216 35.82 |
| DC #2-81 | Frank L. Fleisner and Others formerly Raymond L. Gill v. Local 1023, International Brotherhood of Painters and Allied Trades, and Public Employees Craft Council (25 October 1983) | Stan Gerke, Hearing Examiner | *09.31 *22.2 *22.41 *31.3 *33.21 *33.323 *33.333 *34.12 34.13 *37.11 *37.15 37.3 *41.132 *71.33 |

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|-----------|----------------------------------|--------------|---------|
| DC #8-81 | Montana University System and | Kathryn | *31.46 |
| DC #11-81 | International Brotherhood of | Walker, | *34.39 |
| | Painters and Allied Trades, | Hearing | *35.312 |
| | Locals 1023, 851 or 167 and | Examiner | 35.315 |
| | Montana Maintenance Painters | | *35.321 |
| | Local 11-A (24 November 1981) | | 35.37 |
| | | | *37.11 |
| | Delger and Haniszewski v. | Peter G. | *09.21 |
| | Board of Personnel Appeals, | Meloy, | *22.2 |
| | Montana State University, and | District | 31.46 |
| | IBPAT Locals 1023 and 851, | Judge | *34.39 |
| | Maintenance Painters and | | *37.1 |
| | Allied Trades, Local 11-A, | | 81.521 |
| | 1st Judicial District, | | |
| | Cause #47869 (5 Oct. 1982). | | |
| DC #5-82 | Butte Teamsters Union, Local 2, | Kathryn | 15.511 |
| | Amalgamated Transit Workers | Walker, | 15.53 |
| | Local 381 and Butte School | Investigator | *35.8 |
| | District No. 1, Butte-Silver Bow | | *35.81 |
| | (30 April 1982) | | |
| DC #4-83 | Montana Federation of Teachers, | Linda | *09.113 |
| | and Western Montana College, | Skaar, | *09.62 |
| | Board of Regents of Higher | Hearing | *22.71 |
| | Education, Montana University | Examiner | *35.515 |
| | System and Western Montana | | *37.14 |
| | College Unit of the Montana | | 37.3 |
| | Education Association | | |
| | (30 June 1983) | | |

APPENDIX V

UNFAIR LABOR PRACTICE CASES

UNFAIR LABOR PRACTICE CASES

* Denotes Excerpt in "Annotations of Montana Cases" Section

CITATIONS

ULP #2-73

Employer ordered to bargain collectively with a grandfathered bargaining unit consisting of supervisors and management officials.

Retail Clerks Locals 4, 57,
684, 991, 1573 v. Department
of Revenue (27 February
1974)

Francis J.
Rauci,
Hearing
Examiner

*03.22
*16.3
*33.313
33.42
43.72
72.5
74.31
74.39

Department of Revenue v.
Board of Personnel Appeals
and Montana District
Council of Retail Clerks
1st Judicial District,
Cause #37721 (12 April 1974).

Peter G.
Meloy
District
Judge

81.46
81.526

ULP #3-73

Employer's unlawful demotion of working foreman to operator was motivated by protected union activity.

International Union of Operating
Engineers, Local 371 v.
Sanders County Commissioners
(12 March 1975)

Duane
Johnson,
Hearing
Examiner

*16.3
*16.31
16.32
33.42
72.31
72.324
*72.333
74.31
74.335
74.341

Peter O.
Maltese,
Hearing
Examiner

Board of Personnel Appeals v.
Sanders County,
4th Judicial District,
Cause #5252
(30 July 1974)

*72.333
81.19
81.191

ULP #4-73

Employer's unlawful discharge of five employees was motivated by their involvement in protected union organizational activity. Six other employees lawfully discharged.

Teamsters Local 448 v.
Ravalli County Commissioners
(5 May 1974)

Peter O. *71.9
Maltese, 72.31
Hearing *72.316
Examiner 72.324
72.334
72.35
72.665
74.31
74.335
74.34
*74.372

Teamsters Local 448 v.
Ravalli County,
4th Judicial District,
Cause #12054(4 Nov. 1974)

Edward 81.19
Dussault, 81.331
District 81.491
Judge 81.505
81.506
81.526

ULP #5-73

Employer's unlawful discharge of employee was motivated by protected union activity.

Teamsters Local 45 v.
Liberty County Nursing Home
(17 June 1974)

Jerry W. 72.31
Toner, 72.312
Hearing 72.317
Examiner 72.324
72.334
72.340
74.31
74.335
74.34
74.341
74.361

ULP #1-74

Employer discharged employee for economic reasons, no anti-union animus shown.

Retail Clerks Local 991
v. University of Montana
(14 May 1974)

Peter O. 72.358
Maltese,
Hearing
Examiner

ULP #2-74

Charge dismissed. Enforcement of an arbitration award is appropriately a matter for a suit in a court of law, not an unfair labor practice charge.

International Association of Fire
Fighters Local 630 v. City of
Livingston (16 August 1974)

Patrick F. 47.83
Hooks, *47.87
Chairman *72.591
72.71

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|------------|---|---|---|
| ULP #3-74 | Complaint and counter complaint dismissed, no bad faith bargaining proven on part of either the employer or union. | | |
| ULP #4-74 | | | |
| | Montana Public Employees Craft Council v. Montana State Department of Highways (11 January 1975) | Patrick F. Hooks, Chairman | *72.530 |
| ULP #9-74 | Employer did not interfere with organizational rights guaranteed public employees by sending a letter to certain of its employees during an election campaign. | | |
| | American Federation of State, County and Municipal Employees, v. Employment Security Division Department of Labor and Industry (23 September 1974) | Patrick F. Hooks, Chairman | *72.22 |
| ULP #10-74 | Charge filed by incumbent representative against challenging union dismissed when evidence failed to show that employees' rights were coerced during representation proceeding. | | |
| | Laborers Local 1334 v. Montana Public Employees Association (22 May 1975) | Jerome T. Loendorf, Hearing Examiner | 35.5214 *72.2 *72.23 |
| ULP #12-74 | Employer interfered in a very technical sense, with the administration of a labor organization but not to the extent that it undermined the independence and integrity of the labor organization. Charge dismissed. | | |
| | American Federation of State, County and Municipal Employees, Louis J. Bertagna, Transit Director, City of Billings (30 January 1975) | Peter O. Maltese, Hearing Examiner | *72.115 |
| ULP #13-74 | Employer unlawfully refused to bargain collectively with the union by refusing to use the standing contractual grievance procedure. | | |
| ULP #1-75 | | | |
| | International Brotherhood of Painters Local 1023 v. Montana State University (12 March 1975) | Cordell R. Brown, Hearing Examiner | *01.25 *43.41 *46.12 *46.61 *46.641 *47.11 *47.223 *72.511 *72.76 74.31 *74.39 74.40 |

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|------------|---|------------------------------------|----------|
| ULP #16-74 | Painters Local 260 v. City of Great Falls (10 April 1975) | Neil E. Ugrin, Hearing Examiner | 43.11 |
| | | | *43.73 |
| | | | *43.74 |
| | | | 62.21 |
| | | | *62.232 |
| | | | 62.31 |
| | | | 71.227 |
| | | | *72.5 |
| | | | *74.39 |
| ULP #15-74 | During union organization campaign, employer lawfully laid off employees for economic reasons. | | |
| | | | |
| | International Union of Operating Engineers, Local 400 v. Stillwater County Commissioners (21 March 1975) | Cordell R. Brown, Hearing Examiner | *09.113 |
| | | | *72.312 |
| | | | 72.324 |
| | | | 74.39 |
| ULP #16-74 | See ULP #14-74. | | |
| ULP #1-75 | See ULP #13-74. | | |
| ULP #2-75 | Employer unlawfully denied hearing under negotiated grievance procedure. | | |
| | | | |
| | American Federation of State, County and Municipal Employees, v. City of Livingston (19 August 1975) | Peter O. Maltese, Hearing Examiner | *72.51 |
| | | | *72.76 |
| | | | 74.31 |
| | | | *74.39 |
| | Livingston v. AFSCME and Dyer, 6th Judicial District, Cause #14415 (24 August 1976) | Jack D. Shanstrom, District Judge | 81.5089 |
| | | | 81.6 |
| | Livingston v. AFSCME and Dyer, Montana Supreme Court, 174 M 421, 571 P2d 374 (1977) | Paul G. Hatfield, Chief Justice | *72.51 |
| | | | *72.76 |
| | | | 81.522 |
| | | | |
| ULP #3-75 | Employer lawfully contracted out carpentry work which resulted in the layoff of a county carpenter. | | |
| | | | |
| | United Brotherhood of Carpenters Local 112 v. Board of County Commissioners, Silver Bow County (5 May 1975) | Cordell R. Brown, Hearing Examiner | *41.34 |
| | | | *43.54 |
| | | | 43.541 |
| | | | *43.98 |
| | | | *72.331 |
| | | | *72.3521 |
| | | | *72.664 |
| | | | *72.665 |

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| ULP #5-75 | Employer unlawfully discharged employee because of his union activities. | | |
| | American Federation of State, County and Municipal Employees, Local 2390 v. Louis J. Bertagna, City of Billings (15 December 1975) | Peter O. Maltese, Hearing Examiner | *47.54 *71.31 *71.517 71.8 *71.812 *72.311 *72.312 *72.314 72.315 *72.317 72.318 72.324 74.31 74.361 |
| ULP #8-75 | Employer did not discriminate against employee to discourage membership in her affiliate labor organization. | | |
| | Gwendolyn A. Newman v. Batavia School District No. 26 (29 January 1976) | Cordell R. Brown, Hearing Examiner | 71.31 *72.18 *72.318 *72.360 |
| ULP #11-75 ULP #11A-75 | All charges dismissed. Parties chastised for their lack of candor in dealing with the public. | | |
| | Board of Trustees, School District No. 2, and Billings High School District v. Billings Education Association (13 April 1976) | Brent Cromley, Chairman | *43.131 *62.41 71.227 72.17 72.51 *72.54 *72.55 *72.589 *73.433 |
| ULP #12-75 | Dismissed for lack of jurisdiction. | | |
| | Missoula Elementary Unit of the Montana Education Association v. Board of Trustees of School District No. 1, Missoula County (29 March 1976) | Peter O. Maltese, Hearing Examiner | *01.1 03.31 71.227 |
| ULP #13-75 ULP #14-75 | Discharged library employees are city employees covered by union agreement and must be reinstated. | | |
| | Marie Sutton and Mary Ann Femling, Clerks, Billings City Library v. Director and Trustees of Billings City Library (30 April 1976) | Jerry L. Painter, Hearing Examiner | *41.8 *72.582 74.31 74.32 |

ULP #16-75 Employer unlawfully refused to bargain on a staff evaluation procedure and unlawfully discriminated against teachers by excluding them from assignment because of their union activities.

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|---------------------------------|------------|---------|
| Billings Education Association, | Francis J. | *43.352 |
| v. School District No. 2, | Raucci, | *43.422 |
| Billings (4 March 1976) | Hearing | 43.624 |
| | Examiner | *71.517 |
| | | *72.331 |
| | | *72.533 |
| | | *72.665 |
| | | 74.31 |
| | | 74.33 |
| | | 74.361 |

ULP #17-75 School district unlawfully used individual teaching contracts to end its teachers' participation in a lawful strike.

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|---------------------------------|----------|---------|
| Billings Education Association, | Neil E. | *42.45 |
| v. School District No. 2 and | Ugrin, | *62.523 |
| Billings High School District | Hearing | 71.712 |
| (3 November 1976) | Examiner | 71.72 |
| | | *72.131 |
| | | 72.17 |
| | | *72.533 |
| | | *72.55 |
| | | *72.663 |
| | | 74.31 |
| | | *74.341 |
| | | *74.353 |
| | | *74.372 |
| | | 74.39 |

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|---------------------------------|-----------|---------|
| Billings School District No. 2 | Robert H. | 72.17 |
| v. Board of Personnel Appeals | Wilson, | *72.55 |
| and Billings Education | District | *81.49 |
| Association, | Judge | 81.5089 |
| 13th Judicial District, | | |
| Cause #70652 (10 October 1978). | | |

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|---|----------|---------|
| Billings School District No. 2 | Frank I. | *71.12 |
| v. Board of Personnel Appeals | Haswell, | *72.131 |
| and Billings Education | Chief | 72.17 |
| Association, | Justice | *72.55 |
| Montana Supreme Court, | | 81.521 |
| 185 M104, 604 P2d 778, 36 St. Rep. 2311 | | |
| (1979) | | |

ULP #18-75 Airport Authority is a separate corporate body and its employees are not subject to the same union agreement as city employees.

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|-------------------------------|----------|---------|
| City of Great Falls Public | Jerry L. | *72.530 |
| Employees Craft Council v. | Painter, | *72.582 |
| City of Great Falls (27 April | Hearing | |
| 1976) | Examiner | |

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|------------|---|---------------------------------------|---|
| ULP #20-75 | Recognition clause is a permissible subject of bargaining. Bargaining order issued. | | |
| ULP #21-75 | | | |
| | Office of Budget and Program Planning and Department of Institutions v. Independent Union of Warm Springs State Hospital (30 June 1976) | Brent Cromley, Chairman | 42.21 *43.8 *72.21 74.39 |
| ULP #1-76 | Employer lawfully discharged employees for economic reasons during union organization campaign. | | |
| | Teamsters Local 45 v. Hill County (28 April 1976) | Jeff Andrews, Hearing Examiner | 72.336 *72.358 |
| ULP #3-76 | Employer unlawfully refused to utilize contract grievance procedure. | | |
| | International Association of Fire Fighters, Local 521 v. City of Billings (28 May 1976) | Jerry L. Painter, Hearing Examiner | *47.11 *47.223 *72.76 |
| ULP #4-76 | Employer unlawfully refused to bargain with a representative of the employee's own choosing. | | |
| | Teamsters Local 2 v. Silver Bow County Commissioners (20 July 1976) | Ray Saeman, Hearing Examiner | *43.54 *72.23 *72.3521 *72.531 *72.533 *72.538 74.31 74.39 |
| ULP #5-76 | Employer did not violate the collective bargaining statute by its actions during a union organizing campaign. | | |
| | Retail Clerks Local 57 v. Great Falls International Airport Authority (30 September 1976) | Jeff Andrews, Hearing Examiner | 74.33 |
| ULP #6-76 | Employer unlawfully refused to bargain collectively in good faith with an exclusive representative. | | |
| | International Union of Operating Engineers, Local 400 v. City of Shelby (17 May 1976) | Jeff Andrews, Hearing Examiner | *72.51 *72.537 74.31 74.39 |

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| ULP #11-76 | Employer unlawfully engaged in individual bargaining, thus by-passing the designated exclusive representative. | | |
| | Teamsters Local 448 v. City of Libby (23 September 1976) | Jerry L. Painter, Hearing Examiner | *72.118 74.31 74.32 |
| ULP #13-76 | "Balancing test" utilized to determine whether certain issues are mandatory subjects of bargaining. | | |
| See ULP #19-77 | Rocky Boy Education Association, v. Rocky Boy School District No. 87 (17 June 1977) | Jerry L. Painter, Hearing Examiner | 09.411 09.412 *42.1 *42.11 42.22 42.42 *43.14 *43.44 43.624 72.23 72.311 72.5 74.31 |
| ULP #14-76 | Employer unlawfully failed to provide relevant information, failed to provide its negotiators with necessary authority, and failed to meet with association at scheduled negotiation sessions. | | |
| | Lower Flathead Education Association v. Charlo School District No. 7 (13 December 1976) | Jeff Andrews, Hearing Examiner | *43.98 *72.1 *72.18 *72.530 *72.537 *72.661 *72.665 *72.77 74.31 *74.39 |
| ULP #15-76 | Employer's unlawful discharge was motivated by employee's protected activities. | | |
| | Frazer Education Association, v. Valley County School District No. 2 and 2B (6 December 1976) | Ray Saeman, Hearing Examiner | 72.312 72.314 72.315 72.317 74.31 74.335 74.341 |

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| ULP #16-76 | School board violated the collective bargaining act by unilaterally changing a tentative agreement and submitting an altered document for legal advice. | | |
| | Big Flat Education Association, v. Blaine County School District No. 43 (10 May 1977) | Kathryn Walker, Hearing Examiner | *72.572 74.31 74.32 |
| | Big Flat Education Association v. Blaine County, School District No. 43, 12th Judicial District, Cause #7428 (20 April 1977) | | 81.46 |
| ULP #17-76 | Employer's lawful refusal to enforce modified agency shop clause resulted from employee's uncertain status in bargaining unit. | | |
| | International Association of Machinists, Local 231 v. City of Helena (2 September 1977) | Jeff Andrews, Hearing Examiner | 24.194 *36.1 71.227 *72.652 |
| ULP #18-76 | Charge against union dismissed because union member failed to utilize internal union grievance procedure. | | |
| | Robert Moe v. Officers of American Federation of State, County and Municipal Employees Local 1906 (18 August 1976) | Donna K. Davis, Hearing Examiner | *47.15 *73.115 |
| ULP #19-76 | Employer lawfully refused dues deduction for newly certified exclusive representative until expiration of current collective bargaining agreement with decertified union. | | |
| | Victor Federation of Teachers v. Victor Public Schools (1 November 1976) | Jeff Andrews, Hearing Examiner | *72.21 |
| ULP #20-76 | Employer unlawfully refused to bargain with newly certified exclusive representative. Board of Personnel Appeals petitioned District Court for enforcement of its Final Order. | | |
| | Victor Federation of Teachers v. Victor Public Schools (27 January 1977) | Jeff Andrews Hearing Examiner | *03.31 72.17 72.538 *72.55 *72.583 74.31 74.39 |
| | Board of Personnel Appeals v. Victor School District No. 7, 4th Judicial District, Cause #12998 (15 April 1977). | Jack L. Green, District Judge | 81.19 |

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| ULP #21-76 | Employer unlawfully used materials and staff to aid the cause of one labor organization when two labor organizations were competing during a representation proceeding. | | |
| | Victor Federation of Teachers v. Victor Public Schools (29 October 1976) | Jeff Andrews, Hearing Examiner | 74.31 |
| ULP #25-76 | School district unlawfully threatened teachers with discharge unless individual contracts were signed; employed regressive bargaining techniques; used factfinding as a delaying technique; and initiated an unlawful lockout of teachers. | | |
| ULP #26-76 | | | |
| ULP #27-76 | | | |
| ULP #36-76 | | | |
| | | School District No. 6, Education Association Unit of Columbia Falls v. Columbia Falls School District No. 6 (30 November 1978) | Ray Saeman Hearing Examiner |
| | | | *03.22 |
| | | | *41.21 |
| | | | *51.01 |
| | | | *52.33 |
| | | | *62.524 |
| | | | *72.131 |
| | | | 72.17 |
| | | | 72.51 |
| | | | 72.531 |
| | | | 72.539 |
| | | | *72.55 |
| | | | *72.586 |
| | | | *73.41 |
| | | | 74.31 |
| ULP #28-76 | School district's unlawful discharge motivated by teacher's protected union activities. | | |
| | Billings Education Association v. Billings School District No. 2 [Widenhofer] (28 May 1980) | Jerry L. Painter, Hearing Examiner | *71.512 |
| | | | *72.31 |
| | | | 72.311 |
| | | | 72.312 |
| | | | *72.323 |
| | | | 72.324 |
| | | | 72.362 |
| | | | 74.335 |
| | | | 74.336 |
| | | | 74.341 |
| | | | 74.343 |
| | | | 74.344 |
| | | | 74.345 |
| | Billings School District No. 2 v. Board of Personnel Appeals [Widenhofer], 13th Judicial District, Cause #73573 (21 November 1978). | Robert H. Wilson, District Judge | 09.412 |
| | | | 81.526 |

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|---|---|---------|
| Billings School District No. 2 v. Board of Personnel Appeals [Widenhofer], Montana Supreme Court, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979). | Frank I. Haswell, Chief Justice | *09.121 |
| | | *09.33 |
| | | 09.412 |
| | | 43.233 |
| | | *72.31 |
| | | *72.311 |
| | | *72.334 |
| | | *72.362 |
| | | *81.47 |
| | | *81.493 |
| | | 81.521 |
| ULP #29-76 | Dismissed for lack of jurisdiction (private sector employer). | |
| Marie Miller, et al., Former Members of Billings School Bus Drivers Association v. Roy Morin, School District Transportation Director, Billings School District No. 2 (7 February 1977) | Jerry L. Painter, Hearing Examiner | *01.131 |
| | | *15.15 |
| | | 71.227 |
| | | |
| | | |
| ULP #33-76 | Charges dismissed. Employer's bargaining position did not violate collective bargaining act. | |
| Mission Federation of Teachers, Local 3182 v. Board of Trustees of School District No. 28, Saint Ignatius (10 June 1977) | Kathryn Walker, Hearing Examiner | 71.227 |
| | | 72.17 |
| | | 72.530 |
| | | 72.535 |
| | | 72.539 |
| | | *72.55 |
| ULP #36-76 | See UD #25-76. | |
| ULP #37-76 | Employer unlawfully harassed employee because she had filed a grievance. | |
| Retail Clerks Union Local 991 v. University of Montana (9 March 1977) | Linda Skaar, Hearing Examiner | 47.311 |
| | | 71.227 |
| | | 72.131 |
| | | 72.315 |
| | | *72.324 |
| | | 72.331 |
| | | 72.335 |
| | | *72.76 |
| | | 74.31 |
| ULP #38-76 | School Board did not violate the collective bargaining act when it unilaterally increased the union member's salary above that specified in the contract. | |
| Butte Teachers Union No. 332 v. Board of Trustees, Butte School District No. 1 (14 April 1977) | Jeff Andrews, Hearing Examiner | 71.227 |
| | | *72.614 |
| | | 72.616 |
| | | *72.665 |

ULP #39-76 Employer's unlawful transfer of employee was motivated by protected union activity.

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| Lower Flathead Education Association v. School District No. 7-J, Charlo (19 September 1978) | Kathryn Walker, Hearing Examiner | *72.31 72.312 74.31 74.335 74.336 *81.461 |
| Lower Flathead Education Association v. School District No. 7-J, Charlo, 4th Judicial District, Cause #10114 (16 October 1978) | E. Gardner Brownlee, District Judge | 81.526 |

ULP #41-76 Employer unlawfully engaged in activities which interfered with, restrained, coerced, discriminated against, intimidated, and harassed employees because of their membership and participation in union activities.

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|--|------------------------------|---|
| Montana Public Employees Association v. Employment Security Division, Department of Labor and Industry (6 June 1977) | Ray Saeman, Hearing Examiner | 47.311 *72.131 *72.151 72.17 72.31 72.314 72.318 72.331 72.335 74.31 74.335 |
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ULP #5-77 "Balancing test" used to determine whether certain issues are mandatory subjects of bargaining.

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| Florence-Carlton Unit of the Montana Education Association v. Board of Trustees of School District No. 15-6, Florence-Carlton, Montana | Linda Skaar, Hearing Examiner | *03.12 *42.11 *42.12 *42.21 42.22 42.31 42.32 42.42 42.44 *43.16 *43.211 *43.212 *43.23 *43.233 *43.31 *43.3121 *43.35 *43.42 43.53 *43.531 43.61 |
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|-------------------|---|---|--|
| | | | 43.616 |
| | | | *43.622 |
| | | | *43.623 |
| | | | *43.7 |
| | | | *43.94 |
| | | | *46.21 |
| | | | *71.711 |
| | | | 72.11 |
| | | | 72.589 |
| | | | 74.31 |
| | | | 81.34 |
| ULP #6-77 | School district unlawfully imposed residency-in-district requirement (mandatory subject of bargaining) on non-tenured teachers without negotiating with the exclusive representative. | | |
| | Montana Education Association, v. Musselshell County School District No. 55 and No. 55H 16 June 1977) | Jeff Andrews, Hearing Examiner | 42.11 42.42 *43.212 72.511 72.589 *72.6 72.651 74.31 74.36 74.361 74.362 |
| ULP #7-77 | Charge dismissed. Employer did not favor one union over another during representation proceeding. | | |
| | Retail Clerks Union Local 991 v. University of Montana (23 December 1977) | Jerry L. Painter, Hearing Examiner | 72.1 72.2 |
| ULP #8-77 | Employer's non-renewal of teachers' contracts was not motivated by protected union activities. Charges dismissed. | | |
| | Mission Federation of Teachers, Local 3182 v. Board of Trustees of School District No. 28, Saint Ignatius (20 June 1979) | Jeff Andrews, Hearing Examiner | 71.227 *72.337 |
| ULP #14-77 | Incumbent exclusive representative is an essential party to a decertification proceeding, and therefore is automatically placed on ballot without intervenor's 10 percent showing of interest. | | |
| See ULP #16-78 | Montana Federation of Teachers on behalf of Eastern Montana College Faculty Bargaining Coalition v. Robert N. Noyes and His Agents Who Comprise the Petitioners Seeking Decertification in Case UD #8-77 (1 November 1977) | Jerry L. Painter, Hearing Examiner | 03.22 32.223 32.227 *37.15 *73.31 |

ULP #17-77 Although a question of representation and bargaining unit
 ULP #20-77 structure may exist, the employer must negotiate with the
 current exclusive representative until the representation
 question is resolved.

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| Montana Public Employees | Barry F. | 11.31 |
| Association v. Council of | Smith, | 41.22 |
| Commissioners/Chief Executive | Hearing | 41.8 |
| of Butte/Silver Bow Government | Examiner | 43.142 |
| (1 November 1977) | | 71.712 |
| | | *72.530 |
| | | *72.531 |
| | | 72.532 |
| | | 72.582 |
| | | *72.612 |
| | | 72.642 |
| | | 74.31 |
| | | 74.335 |
| | | *74.341 |

ULP #19-77 Dual motivation test utilized in finding that employer
 unlawfully discharged employees for protected union
 activities.

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|--------------------------------|----------|---------|
| Montana Education Association, | R. R. | 01.29 |
| v. School District No. 87, | D'Hooge, | *71.211 |
| Rocky Boy Route, Box Elder | Hearing | *71.512 |
| (26 September 1978) | Examiner | 72.1 |
| | | 72.3 |
| | | *72.31 |
| | | 72.311 |
| | | 72.312 |
| | | 72.315 |
| | | 72.317 |
| | | 72.318 |
| | | 72.319 |
| | | 72.323 |
| | | 72.324 |
| | | 72.332 |
| | | 72.334 |
| | | 72.538 |
| | | 74.12 |
| | | 74.17 |
| | | 74.31 |
| | | 74.335 |
| | | 74.336 |
| | | *74.34 |
| | | *74.341 |
| | | *74.343 |
| | | *74.344 |
| | | *74.345 |
| | | *74.35 |

ULP #20-77 See UD #17-77.

UD #24-77 Exclusive representative unlawfully refused to process bargaining unit member's grievance. Montana Supreme Court ruled that the Board of Personnel Appeals has jurisdiction to hear claims that a union has breached its duty of fair representation.

Stuart Thomas McCarvel, a
Member of Teamsters Local 45 v.
Teamsters Local 45 (16 December
1983)

Linda
Skaar,
Hearing
Examiner

*01.25
*01.27
*23.2
*23.25
*23.62
23.63
23.7
*46.15
*74.341
*74.342
74.343
*74.344
*74.345
*74.351
*74.352
74.362
74.39
74.40
81.65

Teamsters Local 45 v. Board of
Personnel Appeals and McCarvel,
Montana Supreme Court,
195 M 272, 635 P2d 1310,
38 St. Rep. 1841 (1981).

Gene B.
Daly,
Justice

*01.1
01.29
*03.4
09.413
*23.2
23.7
*47.21
*73.113
81.523
81.65

Teamsters Local 45 v. Board of
Personnel Appeals and McCarvel,
1st Judicial District,
Cause #50170 (19 August 1985)

Gordon R.
Bennett,
District
Judge

09.413
*23.1
*23.26
*47.11
*47.21
*47.32
*71.13
*73.113
*74.3
*74.344
*74.345
*74.362
*81.31
*81.493
*81.50
*81.502
*81.503
*81.5089
*81.521

- ULP #25-77 Employer unlawfully made statements which predicted dire consequences for employees attempting to affiliate with union.
- | | | |
|---|--------------------------------|---------------------------|
| Teamsters Local 53 v. Gallatin County Commissioners (13 October 1977) | Jeff Andrews, Hearing Examiner | *72.131 72.17 74.31 |
|---|--------------------------------|---------------------------|
- ULP #27-77 Employer did not violate collective bargaining act by refusing to furnish information or by refusing to meet at reasonable times and places or through other alleged activities.
- | | | |
|---|------------------------------|---|
| Kalispell Police Protective Association v. City of Kalispell (4 October 1978) | Stan Gerke, Hearing Examiner | *72.131 *72.151 72.17 *72.340 *72.532 *72.537 72.539 72.74 *72.77 |
|---|------------------------------|---|
- ULP #30-77 Employer did not violate collective bargaining act by making comments regarding the filing of grievances by union members
- | | | |
|--|-----------------------------------|--------------------------------------|
| Butte Teachers' Union, Local 332 v. Joe Sicotte, Superintendent, Butte School District No. 1 (23 March 1978) | Jack H. Calhoun, Hearing Examiner | *01.21 *01.27 *72.131 72.17 |
|--|-----------------------------------|--------------------------------------|
- ULP #36-77 Employer did not favor one union over another in the use of campus mail.
- See DC #9-77 Retail Clerks Union Local 991 v. University of Montana (12 June 1978)
- | | | |
|--|--------------------------------|-----------------------------------|
| | Jeff Andrews, Hearing Examiner | 35.533 35.534 37.5 72.22 |
|--|--------------------------------|-----------------------------------|
- ULP #7-78 Employer lawfully utilized grievance procedure established prior to election of exclusive representative.
- | | | |
|--|---------------------------------|---|
| University Teachers Union, MFT v. Commissioner of Higher Education and State Board of Regents (7 October 1978) | Jerry Painter, Hearing Examiner | *43.233 43.531 46.42 *46.641 *72.51 72.583 |
|--|---------------------------------|---|

ULP #11-78 Municipal court judge must comply with contract grievance procedure negotiated by City of Missoula and exclusive representative.

| | | |
|---|--|---|
| Retail Clerks Union Local 991 v. Wally Clark, Police Judge, City of Missoula (26 January 1979) | Jerry Painter, Hearing Examiner | *01.1 01.32 *11.11 11.12 *11.4 15.34 16.31 16.41 47.83 74.31 74.32 74.335 74.36 |
| Clark v. Montana Human Rights Commission, Board of Personnel Appeals, and City of Missoula, 4th Judicial District, Cause #DV-79-407 (21 Jan. 1980) | Jack L. Green, District Judge | 84.182 |

ULP #12-78 Dual motivation test utilized in finding that employer lawfully discharged employee.

| | | |
|--|---|---|
| Brockton Education Association v. Board of Trustees, Roosevelt County School District No. 55 and 55F (11 December 1979) | Jeff Andrews, Hearing Examiner | *03.22 *71.512 *72.31 *72.311 72.312 72.315 72.324 72.334 *72.360 |
|--|---|---|

ULP #13-78 Complaint deferred to contract grievance procedure under Collyer Doctrine.

| | | |
|--|---|--|
| American Federation of State, County and Municipal Employees, Local 216 v. City of Laurel (20 October 1978) | Kathryn Walker, Hearing Examiner | 01.25 *47.54 62.521 71.8 *71.81 71.811 *71.812 71.813 71.816 72.5 *74.16 |
|--|---|--|

ULP #16-78 Employer unlawfully paid new hires a different salary than the salary paid similarly situated faculty members under a collective bargaining agreement.

| | | |
|-------------------------------|----------|---------|
| American Association of | Kathryn | *09.32 |
| University Professors, E.M.C. | Walker, | 71.15 |
| Chapter v. Eastern Montana | Hearing | 72.17 |
| College (9 October 1979) | Examiner | *72.31 |
| | | *72.318 |
| | | 72.51 |
| | | *72.55 |
| | | 72.589 |
| | | *72.63 |
| | | 72.665 |
| | | 74.31 |

ULP #17-78 Employer unlawfully made unilateral classification changes and imposed conditions upon proposed bargaining.

| | | |
|---------------------------------|----------|---------|
| Montana Public Employees | Jack H. | 42.12 |
| Association v. State of Montana | Calhoun, | 43.311 |
| Department of Administration, | Hearing | *43.312 |
| Personnel Division (17 January | Examiner | 72.51 |
| 1979) | | *72.533 |
| | | *72.590 |
| | | *72.611 |
| | | 72.614 |
| | | 72.616 |
| | | 72.65 |
| | | 72.665 |
| | | 74.31 |
| | | *74.32 |
| | | 74.39 |

ULP #18-78 Employer unlawfully terminated labor agreement and subcontracted work performed under labor agreement.

| | | |
|----------------------------------|----------|---------|
| International Brotherhood of | Rick | 01.28 |
| Electrical Workers, Local 185 v. | D'Hooze, | 01.32 |
| Helena School District No. 1 | Hearing | 03.22 |
| | Examiner | *06.3 |
| | | 43.123 |
| | | *43.54 |
| | | 46.44 |
| | | *71.222 |
| | | *71.517 |
| | | 72.311 |
| | | 72.332 |
| | | 72.3521 |
| | | 72.358 |
| | | 72.359 |
| | | 72.51 |
| | | *72.587 |
| | | 72.591 |
| | | 72.614 |
| | | 72.664 |
| | | 72.74 |

ULP #19-78 Employer unlawfully insisted upon bargaining to impasse the composition or scope of the bargaining unit, a permissive subject of bargaining.

| | | |
|-----------------------------------|----------|---------|
| International Association of Fire | Jack H. | 15.43 |
| Fighters Local 448 v. City of | Calhoun | 31.25 |
| Helena (18 October 1978) | Hearing | 33.39 |
| | Examiner | *33.45 |
| | | *36.123 |
| | | *42.12 |
| | | *42.21 |
| | | *43.7 |
| | | *43.8 |
| | | *51.01 |
| | | *71.517 |
| | | *72.54 |
| | | 74.31 |
| | | 74.361 |

ULP #20-78 Employer violated the collective bargaining act
 ULP #22-78 by implementing final offer before impasse occurred
 ULP #25-78 (individual contracts); by conditional bargaining; by
 ULP #26-78 withdrawing recognition and refusing to bargain with
 ULP #33-78 exclusive representative; and by recognizing and bargaining
 with new exclusive representative. Board of Personnel
 Appeals' discretion in determining "laboratory conditions"
 for representation elections upheld by Montana Supreme
 Court.

See DC
 #5-78

| | | |
|--------------------------|----------|---------|
| Bigfork Area Education | Rick | 01.21 |
| Association v. Board of | D'Hooge, | 01.29 |
| Flathead and Lake County | Hearing | *03.12 |
| School District No. 38 | Examiner | 03.22 |
| (20 July 1979) | | *09.33 |
| | | 09.412 |
| | | 09.413 |
| | | 09.43 |
| | | 15.121 |
| | | 31.24 |
| | | 31.5 |
| | | 37.3 |
| | | *37.5 |
| | | 42.11 |
| | | 42.12 |
| | | *42.42 |
| | | *43.44 |
| | | 43.619 |
| | | 43.621 |
| | | *51.01 |
| | | 71.11 |
| | | 71.15 |
| | | 71.517 |
| | | *72.131 |
| | | 72.17 |
| | | 72.21 |
| | | *72.5 |
| | | *72.533 |
| | | 72.538 |

| | | | |
|------------|--|--|----------|
| | | | *72.54 |
| | | | *72.55 |
| | | | 72.586 |
| | | | *72.588 |
| | | | 72.589 |
| | | | *72.63 |
| | | | 72.663 |
| | | | 72.74 |
| | | | 74.11 |
| | | | 74.12 |
| | | | 74.31 |
| | | | 74.32 |
| | | | 74.36 |
| | | | 74.39 |
| | Board of Personnel Appeals v. District Court of the 11th Judicial District, Montana Supreme Court, 183 M 223, 598 P2d 1117, 36 St. Rep. 1531 (1979). | John C. Sheehy, Justice | *01.24 |
| | | | *09.413 |
| | | | 35.48 |
| | | | *35.61 |
| | | | 37.5 |
| | | | 81.333 |
| | | | *81.5084 |
| | | | 81.521 |
| | | | 81.62 |
| | | | 84.191 |
| | School District No. 38, Flathead and Lake Counties v. Board of Personnel Appeals and Bigfork Education Association, 11th Judicial District, Cause #DV-79-425 (28 May 1980) | J.M. Salansky, District Judge | 81.46 |
| | | | *81.49 |
| | | | 81.491 |
| | | | 81.5081 |
| | | | 81.5083 |
| | | | 81.526 |
| | Bigfork Teachers Association v. Board of Personnel Appeals and Bigfork Area Education Association, 11th Judicial District, Cause #DV-79-008 (30 March 1981). | Robert C. Sykes, District Judge | 37.5 |
| | | | 81.333 |
| | | | 81.5084 |
| | | | 81.6 |
| ULP #23-78 | School district unlawfully issued individual teaching contracts, including wages and hours before "true impasse" was reached and before a collective bargaining agreement was negotiated. | | |
| | Frazer Education Association v. Valley County School District No. 2 and No. 2B (10 April 1979) | Stan Gerke, Hearing Examiner | *72.131 |
| | | | 72.17 |
| | | | 72.51 |
| | | | 72.533 |
| | | | *72.55 |
| | | | 72.586 |
| | | | 74.31 |
| | | | 74.335 |
| | | | 74.361 |
| | | | 74.39 |
| ULP #25-78 | See UD #20-78. | | |
| ULP #26-78 | See UD #20-78. | | |

ULP #30-78 Employer unlawfully refused to negotiate until bargaining unit question was settled and until a member of the union's negotiating team was replaced.

| | | |
|---|-------------------------------|-------------------------------------|
| Montana Public Employees Association v. Office of Public Instruction (20 July 1979) | Linda Skaar, Hearing Examiner | *22.7 72.588 *72.591 74.39 |
| Office of Public Instruction v. Board of Personnel Appeals and Montana Public Employees Association, 1st Judicial District, Cause #44192 (9 May 1980) | Gordon R. Bennett, District | 81.331 81.5089 81.526 |

ULP #33-78 See UD #20-78.

ULP #34-78 Recognized bargaining representative unlawfully discriminated against unit members who were paying dues to rival labor organization.

| | | |
|---|---------------------------------------|--|
| Ronan Teachers' Progressive Caucus, MFT v. Ronan-Pablo Unit, Montana Education Association (22 August 1980) | Janice S. Van Riper, Hearing Examiner | 21.3 22.2 *24.11 24.194 24.221 *71.71 *73.1142 *73.53 74.31 74.33 74.361 |
|---|---------------------------------------|--|

ULP #2-79 Certified bargaining representative unlawfully required employer to withhold dues without individual dues checkoff authority.

| | | |
|--|----------------------------------|--|
| Kalispell Federation of Teachers v. Kalispell Education Association, Montana Education Association, and Flathead County School District No. 5 (11 December 1979) | Barry F. Smith, Hearing Examiner | *01.1 *03.22 *06.3 09.413 *24.11 24.12 *24.132 24.151 24.152 *24.161 24.222 *24.41 *72.1 *72.2 *73.1 73.5 74.31 74.34 |
|--|----------------------------------|--|

ULP #3-79

Employer's discharge of employee was motivated by anti-union animus.

Bruce Young by Construction
and General Laborers' Local
No. 1334 v. City of Great Falls
(21 February 1980)

Jack H.
Calhoun,
Hearing
Examiner

01.32
09.413
*47.54
71.512
71.8
*71.81
*71.811
71.812
71.813
71.816
*72.1
72.11
72.2
*72.311
72.319
72.324
72.334
72.336
*72.4
72.51
*72.511
74.31
74.335
74.341
*74.344
74.345
*74.352
74.361
*81.18

Young by Laborers' Local 1334
v. Great Falls,
8th Judicial District,
Cause #ADV-80-304 (1 December 1981)

Joel G.
Roth,
District
Judge

*01.1
01.32
47.54
71.8
72.11
72.2
72.319
72.334
72.4
72.511
81.505
81.5082
*81.521
81.522
81.6

Young by Laborers' Local 1334
v. Great Falls,
Montana Supreme Court,
632 P2d 1111 (1981).

Frank B.
Morrison,
Jr.
Justice

*81.191
*81.374
81.65

| | | |
|---|--|----------|
| Young by Laborers' Local 1334 v. Great Falls, Montana Supreme Court, 646 P2d 512, 39 St. Rep. 1047 (1982). | John C. Sheehy, Justice | 09.413 |
| | | *47.18 |
| | | 47.54 |
| | | *71.11 |
| | | *71.15 |
| | | *71.223 |
| | | 71.8 |
| | | 71.811 |
| | | 71.813 |
| | | 71.816 |
| | | 72.1 |
| | | 72.11 |
| | | *72.18 |
| | | 72.2 |
| | | *72.31 |
| | | 72.311 |
| | | *72.316 |
| | | 72.319 |
| | | 72.334 |
| | | 72.4 |
| | | 72.511 |
| | | 81.505 |
| | | *81.5082 |
| Great Falls v. Young by Laborers' Local 1334 and Board of Personnel Appeals, 8th Judicial District, Cause #ADV-83-393 (8 Nov. 1983). | H. William Coder, District Judge | *74.343 |
| | | 74.344 |
| | | 74.345 |
| | | *81.50 |
| | | *81.5087 |
| Great Falls v. Young by Laborers' Local 1334 and Board of Personnel Appeals, Montana Supreme Court, 686 P2d 185 (1984). | L.C. Gulbrandson, Justice | 81.521 |
| | | *81.54 |
| | | *09.413 |
| | | 74.335 |
| | | 74.336 |
| | | *74.34 |
| | | *74.341 |
| | | 74.343 |
| | | *74.344 |
| | | *74.345 |
| ULP #10-79 | Employer unlawfully withdrew offer after acceptance by union. | *81.502 |
| | | 81.5087 |
| | | 81.521 |
| Teamsters Local 448 v. Sanders County (3 April 1979) | Bruce R. Midgett, Hearing Examiner | *72.539 |
| | | *74.21 |

ULP #11-79 Employer unlawfully failed to reopen negotiations in
 ULP accordance with provisions of the collective bargaining
 #11-A-79 agreement.

| | | |
|--------------------------------|------------|---------|
| American Federation of State, | Patrick F. | 01.29 |
| County and Municipal Employees | Hooks, | *01.32 |
| v. Governor, State of Montana | Chairman | 09.32 |
| (3 April 1982) | | 09.33 |
| | | 09.412 |
| | | 09.413 |
| | | 09.43 |
| | | *53.24 |
| | | *62.31 |
| | | *62.36 |
| | | *62.523 |
| | | 71.211 |
| | | *71.512 |
| | | *71.517 |
| | | *71.519 |
| | | 72.17 |
| | | 72.5 |
| | | 72.51 |
| | | *72.511 |
| | | 72.531 |
| | | 72.532 |
| | | *72.533 |
| | | *72.535 |
| | | 72.536 |
| | | 72.538 |
| | | *72.539 |
| | | *72.55 |
| | | 72.581 |
| | | *72.7 |
| | | *72.73 |
| | | 72.74 |
| | | 72.75 |
| | | 73.41 |
| | | *73.434 |
| | | 73.440 |
| | | 73.441 |
| | | *73.5 |
| | | 74.12 |
| | | 74.17 |
| | | *74.341 |
| | | *74.352 |

ULP #19-79 Employer unlawfully refused to submit a labor contract
 dispute to arbitration. County commissioners, not county
 treasurer, are the employers of affected employees.

| | | |
|----------------------------------|----------|--------|
| Montana Public Employees | Rick | 01.25 |
| Association, on Behalf of | D'Hooge | 01.29 |
| Martin Stafford and Elaine Brown | Hearing | 03.22 |
| v. County Commissioners and | Examiner | *11.12 |
| Treasurer, Cascade County | | *11.13 |
| (22 August 1980) | | *11.16 |
| | | *11.22 |
| | | *16.32 |

| | | | |
|------------|---|-------------|---------|
| | | | 16.41 |
| | | | 47.222 |
| | | | 47.521 |
| | | | 72.1 |
| | | | 72.5 |
| | | | 72.582 |
| | | | 72.71 |
| | | | *72.76 |
| | | | 74.12 |
| | | | 74.14 |
| | | | 74.15 |
| | | | 74.31 |
| | | | *74.352 |
| | | | *74.39 |
| ULP #26-79 | Employer lawfully refused to bargain with union. Affected | | |
| ULP #27-79 | employees were part of a multi-union bargaining group | | |
| | with an existing agreement. | | |
| | Plumbers and Fitters, Local 139 | Rick | *22.2 |
| | and IBEW Local 122 v. City of | D'Hooge | *22.41 |
| | Great Falls (17 April 1981) | Hearing | 31.46 |
| | | Examiner | *34.12 |
| | | | *41.132 |
| | | | *71.13 |
| | | | 71.227 |
| | | | *71.517 |
| | | | *72.591 |
| ULP #29-79 | Employer unlawfully made unilateral changes in working | | |
| | conditions, by-passed exclusive representative, and | | |
| | initiated actions that were inherently destructive to | | |
| | protected employee rights. | | |
| | Butte Teamsters Union, Local 2 | Clarette C. | *01.27 |
| | v. Silver Bow County on Behalf | Martin, | 15.233 |
| | of Silver Bow General Hospital, | Hearing | *43.7 |
| | Butte (21 May 1981) | Examiner | *47.54 |
| | | | 71.8 |
| | | | *72.131 |
| | | | 72.337 |
| | | | *72.55 |
| | | | *72.612 |
| | | | 72.652 |
| | | | 74.31 |
| | | | *74.32 |
| | | | 74.335 |
| | | | 74.336 |
| | | | 74.343 |
| | | | 74.344 |
| ULP #30-79 | Employer unlawfully refused to arbitrate the procedural | | |
| | conditions for non-renewal of a non-tenured teacher. | | |
| | Savage Education Association v. | Stan | 16.45 |
| | Savage Public Schools, Richland | Gerke, | 42.11 |
| | County Elementary District No. 7 | Hearing | 42.12 |
| | and High School District No. 2 | Examiner | 42.42 |
| | (12 September 1980) | | *43.23 |

| | | | |
|--------------------------|---|--|---|
| | | | *43.233 |
| | | | *43.99 |
| | | | 47.223 |
| | | | *47.521 |
| | | | 72.51 |
| | | | *72.589 |
| | | | 72.71 |
| | | | 72.76 |
| | | | 74.31 |
| | | | 74.32 |
| | | | 74.361 |
| | | | *74.39 |
| | Savage Public Schools (Richland County Elementary District No. 7 and High School District No. 3) v. Savage Education Association and Board of Personnel Appeals, Montana Supreme Court, 199 M 39, 647 P2d 833, 39 St. Rep. 1192 (1982). | Frank I. Haswell, Chief Justice | 47.223 *72.51 72.76 81.491 *81.492 *81.50 81.5081 *81.5089 *81.521 |
| ULP #31-79 ULP #37-79 | Employer unlawfully refused to negotiate the subject of termination for cause, a mandatory subject of bargaining. | | |
| | Montana Public Employees Association v. Georgia Ruth Rice, Office of Superintendent of Public Instruction (8 August 1980) | Jack H. Calhoun, Hearing Examiner | 03.22 42.11 42.32 42.42 42.45 *43.23 *43.233 43.51 *43.99 72.51 72.589 74.31 |
| ULP #42-79 | Employer successfully met its burden under "but-for" test and lawfully suspended employee. | | |
| | Teamsters Local 190, Representing Denis A. Mueller v. City of Billings (14 April 1981) | Kathryn Walker, Hearing Examiner | 47.311 72.112 72.114 *72.31 72.311 *72.312 72.314 72.324 72.335 72.341 72.361 |
| ULP #43-79 | Employer unlawfully made unilateral changes in its policy regarding second evaluators and hearings for non-tenured teachers. | | |

Bozeman Education Association
v. Gallatin County School District
No. 7, Bozeman (14 April 1981)

Jack H.
Calhoun,
Hearing
Examiner

*42.1
*42.2
*42.3
42.42
42.45
43.232
*43.233
*43.624
72.511
72.589
*72.612
72.665
*74.32
*74.39

ULP #44-79 School district unlawfully withheld "agency shop fees"
without individual checkoff or authorization.

Montana Federation of Teachers v.
Lake County School District No. 30
and the Ronan-Pablo Unit of the
Montana Education Association
(30 April 1980)

Kathryn
Walker,
Hearing
Examiner

24.12
24.131
24.132
24.14
*24.151
24.152
24.194
24.221
*46.61
*72.1
72.2
73.1
*73.5
74.31
*74.34

ULP #47-79 Employer lawfully changed, with a business justification, its
ULP #48-79 vacation leave policy during the course of a strike.
ULP #49-79

State of Montana, Labor Relations
Bureau v. Montana Public
Employees Association (2 March
1981)

Jack H.
Calhoun,
Hearing
Examiner

42.12
*42.22
*62.23
71.227
*72.358
*73.45
74.39

ULP #50-79 Dismissed for lack of jurisdiction.

Karen B. Olson, Member of
Montana Education Association,
v. Fort Peck Community College
(4 June 1980)

Linda
Skaar,
Hearing
Examiner

01.1
01.32
*11.11
15.01

ULP #5-80 Collyer deferral denied because of employer's interference
with the use of the contract grievance arbitration procedure.
Employer unlawfully refused to strike names from
arbitration list, and was ordered to do so.

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|--|--|---------|
| American Federation of State, County and Municipal Employees v. Kalispell School District No. 5 (30 September 1980) | Kathryn Walker, Hearing Examiner | 01.21 |
| | | 01.25 |
| | | 03.22 |
| | | 09.25 |
| | | 09.411 |
| | | 09.413 |
| | | *47.11 |
| | | 47.222 |
| | | 47.522 |
| | | *47.54 |
| | | *47.61 |
| | | 71.8 |
| | | *71.81 |
| | | *71.811 |
| | | *72.51 |
| | | *72.71 |
| | | *74.35 |
| | | *74.39 |
| Flathead School District No. 5 v. Board of Personnel Appeals and American Federation of State, County and Municipal Employees, 11th Judicial District, Cause #DV-80-600 (4 June 1981). | Robert C. Sykes, District Judge | 47.61 |
| | | 72.71 |
| | | 81.19 |
| | | 81.5082 |
| | | 81.521 |
| ULP #7-80 | Employer unlawfully refused to process and arbitrate a grievance. | |
| | | |
| Havre Education Association v. Hill County School District No. 16 and A, Havre (25 November 1980) | Elizabeth L. Griffing, Hearing Examiner | *01.1 |
| | | *01.25 |
| | | 03.22 |
| | | *09.2 |
| | | 09.411 |
| | | 09.412 |
| | | 09.413 |
| | | 42.11 |
| | | 42.12 |
| | | 42.42 |
| | | *43.11 |
| | | *43.120 |
| | | 47.18 |
| | | *47.223 |
| | | *47.521 |
| | | 72.17 |
| | | 72.51 |
| | | *72.55 |
| | | *72.652 |
| | | 72.71 |
| | | *72.76 |
| | | 74.31 |
| | | *74.39 |
| | | 74.40 |

ULP #10-80 Dual-motivation test utilized to determine that employer unlawfully discharged employee.

| | | |
|--|-------------------------------------|---|
| Teamsters Local 190 v. City of Billings (13 December 1982) | Jack H. Calhoun Hearing Examiner | *72.31 *72.311 72.312 *72.315 72.324 72.334 72.355 72.361 74.31 74.335 74.344 74.345 74.361 |
|--|-------------------------------------|---|

| | | |
|---|--------------------------------------|------------------|
| Billings v. Board of Personnel Appeals and Teamsters Local 190, 13th Judicial District, Cause #DV-83-469 (7 Feb. 1985). | William J. Speare, District Judge | 72.31 *81.521 |
|---|--------------------------------------|------------------|

| | | |
|---|------------------------------|--|
| Teamsters Local 190 and Board of Personnel Appeals v. Billings, [Carlson], Montana Supreme Court, 199 M 302, 648 P2d 1169, 39 St. Rep. 1414 (1982). | Frank I. Haswell, Justice | *09.3 *71.13 *71.517 *72.35 *81.491 81.50 *81.502 81.523 81.65 |
|---|------------------------------|--|

ULP #13-80 Employer lawfully refused to incorporate into a collective bargaining agreement certain items used to settle a strike with other unions.

| | | |
|---|--------------------------------------|--|
| Montana State Council of Carpenters, an Affiliate of the Brotherhood of Carpenters and Joiners of America v. Montana University System (25 November 1980) | Jack H. Calhoun, Hearing Examiner | 71.227 72.539 *72.571 *72.591 |
|---|--------------------------------------|--|

ULP #15-80 Testimony did not relate to the charge. Case dismissed.

| | | |
|---|----------------------------------|-------------------------------------|
| United Food and Commercial Workers, Local 991 v. University of Montana (25 November 1980) | Linda Skaar, Hearing Examiner | 63.44 71.227 72.324 72.340 |
|---|----------------------------------|-------------------------------------|

ULP #19-80 District lawfully reprimanded teacher for calling an
 ULP #22-80 unapproved teachers' meeting during working hours, but
 unlawfully placed the teacher on probation for this action
 and for distributing evaluation forms to evaluate principals.

| | | |
|-------------------------------|----------|---------|
| Huntley Project Education | Jack H. | 09.412 |
| Association v. Yellowstone | Calhoun, | 09.413 |
| County School District No. 24 | Hearing | 21.5 |
| (3 April 1981) | Examiner | *47.54 |
| | | 71.8 |
| | | 71.81 |
| | | *72. |
| | | *72.11 |
| | | 72.112 |
| | | *72.114 |
| | | *72.115 |
| | | 72.23 |
| | | 72.312 |
| | | *72.319 |
| | | 72.323 |
| | | *72.351 |
| | | 72.359 |
| | | *73.5 |
| | | 74.31 |
| | | *74.32 |

ULP #23-80 Employer's conduct during union organizing campaign did not
 ULP #43-80 violate the collective bargaining act.

| | | |
|--------------------------------|----------|---------|
| United Food and Commercial | Jack H. | 71.11 |
| Workers, Local 684 v. Cooney | Calhoun, | *71.15 |
| Convalescent Home, Lewis | Hearing | 71.227 |
| and Clark County (15 May 1981) | Examiner | *72.11 |
| | | *72.112 |
| | | 72.114 |
| | | 72.151 |
| | | 72.323 |
| | | 72.324 |
| | | *72.4 |

ULP #29-80 All employer and association charges dismissed. Bargaining
 ULP #29A-80 order issued.

| | | |
|-------------------------------------|----------|---------|
| Missoula County High School | Stan | 09.2 |
| Education Association, Montana | Gerke, | 72.572 |
| Education Association v. Board | Hearing | *72.581 |
| of Trustees, Missoula County | Examiner | *73.54 |
| High School District (3 April 1981) | | 74.39 |

- ULP #30-80 Employer unlawfully made a unilateral decision to reduce services during union organization campaign; interfered with the formation of a labor organization; and discriminated in employment to discourage membership in labor organization.

| | | |
|---|--|----------|
| Butte Teamsters Union, Local 2 v. County of Missoula, Missoula County Airport (29 April 1983) | Jack H. Calhoun, Hearing Examiner | 43.53 |
| | | 43.54 |
| | | *72.131 |
| | | 72.17 |
| | | 72.311 |
| | | 72.337 |
| | | *72.3521 |
| | | 72.55 |
| | | 72.591 |
| | | *72.62 |
| | | 74.31 |
| | | *74.32 |
| | | 74.335 |
| | | *74.343 |
| | | 74.344 |
| | | 74.345 |
| | | 74.361 |

- ULP #34-80 School district unlawfully entered into individual contracts with three teachers which did not conform to negotiated master agreement.

| | | |
|--|---------------------------------------|---------|
| Circle Teachers Association v. McCone County School District No. 1 (15 May 1981) | Stan Gerke, Hearing Examiner | *01.1 |
| | | 01.21 |
| | | 09.2 |
| | | 09.411 |
| | | 09.412 |
| | | 09.413 |
| | | 42.11 |
| | | 42.42 |
| | | 43.11 |
| | | *43.120 |
| | | *47.54 |
| | | 71.8 |
| | | 71.81 |
| | | *71.813 |
| | | 72.17 |
| | | *72.55 |
| | | *72.590 |
| | | *72.65 |
| | | *72.652 |
| | | 74.31 |
| | | *74.32 |
| | | 74.341 |
| | | 74.361 |

- ULP #38-80 Employer had legitimate business objective for demoting, reprimanding, and refusing to re-hire employee. Anti-union motivation not proven.

| | | |
|---|---------------------------------------|---------|
| Jerry T. Klundt, Affiliated with Teamsters Local 190 v. City of Billings (2 April 1984) | Stan Gerke, Hearing Examiner | 71.227 |
| | | *72.335 |
| | | *72.351 |
| | | 72.362 |

| | | | |
|--------------------------|--|-----------------------------------|---|
| | Klundt v. Board of Personnel Appeals, City of Billings and Teamsters Local 190, 13th Judicial District, Cause #DV 84-785 (19 April 1985) . | William J. Speare, District Judge | *81.526 |
| | Klundt v. Board of Personnel Appeals, City of Billings and Teamsters Local 190, 13th Judicial District, Cause #DV 84-2555 (24 Oct. 1985) | Diane G. Barz, District Judge | *71.230 *81.493 *81.50 *81.502 *81.503 *81.521 *81.54 |
| | Klundt v. Board of Personnel Appeals and Teamsters Local 190, Montana Supreme Court, 43 St. Rep. 1 (1986). | William E. Hunt, Sr., Justice | *21.11 *23.4 *71.5 *73.113 81.521 *81.526 *84.192 |
| ULP #39-80 | Refusal to abide by an arbitrator's decision is a matter for the courts rather than an unfair labor practice charge. | | |
| | American Federation of State, County and Municipal Employees v. Fergus County and All Representatives of Fergus County | Jack H. Calhoun, Hearing Examiner | *01.28 03.22 09.411 09.412 09.413 47.17 *47.54 47.87 71.227 *71.82 71.821 71.822 71.824 72.591 *72.71 *72.76 |
| ULP #43-80 | See UD #23-80 | | |
| ULP #10-81 | Employer did not discriminate against substitute teacher who had filed representation petition. | | |
| | Robert Charles Waltmire, Local 1784, Columbia Falls Federation of Teachers v. Columbia Falls School District No. 6 (30 October 1981) | Jack H. Calhoun, Hearing Examiner | 71.227 72.323 *72.4 |
| ULP #16-81 ULP #20-81 | Employer unilaterally and unlawfully imposed a new system of discipline on teachers, a mandatory subject of bargaining. Employer also unlawfully refused employee union representation at investigatory interview which employee feared might result in disciplinary action. | | |

| | | |
|---|--|---------|
| Kessler Association of Teachers, Montana Education Association v. Lewis and Clark School District No. 2 (3 April 1982) | Linda Skaar, Hearing Examiner | 09.412 |
| | | 09.413 |
| | | *43.99 |
| | | *47.311 |
| | | *72.335 |
| | | *72.4 |
| | | 72.511 |
| | | *72.572 |
| | | 72.651 |
| | | 72.665 |
| | | 74.31 |
| | | *74.32 |
| | | 74.39 |

ULP #18-81 Defendant association lawfully refused to submit negotiations to board of review provided for under collective bargaining agreement.

| | | |
|---|---|---------|
| Shelby School District No. 14. v. Shelby Education Association (1 March 1982) | Kathryn Walker, Hearing Examiner | 09.21 |
| | | *09.231 |
| | | *47.54 |
| | | *51.01 |
| | | 71.227 |
| | | 71.8 |
| | | *71.81 |
| | | *71.813 |
| | | 73.4 |
| | | *73.55 |

ULP #19-81 Employer lawfully developed written guidelines for administration of the contract business leave provision.

| | | |
|---|---|---------|
| Lewistown Education Association v. Fergus County School District No. 1 (1 March 1982) | Kathryn Walker, Hearing Examiner | 01.21 |
| | | *47.54 |
| | | 71.227 |
| | | 71.8 |
| | | *71.81 |
| | | 71.813 |
| | | *72.664 |
| | | *72.76 |

ULP #20-81 See UD #16-81.

ULP #22-81 Absent clear contract provision, employer lawfully refused to submit a contract dispute to arbitration.

| | | |
|---|--|--------|
| Townsend Education Association v. Broadwater County School District No. 7 (21 April 1982) | Jack H. Calhoun, Hearing Examiner | 01.25 |
| | | 09.411 |
| | | 71.227 |
| | | 72.591 |
| | | *72.71 |

| | | | | |
|------------|--|--|---|---------|
| ULP #30-81 | School district did not violate collective bargaining act through surface bargaining (defined in this proceeding). | American Federation of State, County and Municipal Employees v. Havre School District No. 16 and A (17 May 1982) | Rick D'Hooge, Hearing Examiner | 09.413 |
| | | | | 71.227 |
| | | | | 72.17 |
| | | | | *72.511 |
| | | | | *72.531 |
| | | | | *72.534 |
| | | | | *72.535 |
| | | | | 72.538 |
| | | | | 72.539 |
| | | | | *72.55 |
| | | | | *72.77 |
| | | | | |
| ULP #33-81 | Employer unlawfully refused to negotiate pay matrix with exclusive representative. | Mountain View and Pine Hills Education Association v. State of Montana Personnel Division (15 December 1982) | Linda Skaar, Hearing Examiner | 42.12 |
| | | | | 72.511 |
| | | | | *72.530 |
| | | | | *72.538 |
| | | | | *72.54 |
| | | | | *72.56 |
| | | | | 72.63 |
| | | | | 72.662 |
| | | | | 72.667 |
| | | | | 74.31 |
| ULP #37-81 | Employer violated the collective bargaining act when it unilaterally changed the implementation of the wage scale contained in an expired collective bargaining agreement. | Forsyth Education Association v. Rosebud County School District No. 4, Montana University System and the Labor Relations Bureau, Department of Administration, Amici Curiae | Stan Gerke, Hearing Examiner | *09.412 |
| | | | | *09.413 |
| | | | | 42.12 |
| | | | | *72.641 |
| | | | | *72.663 |
| | | | | 74.31 |
| | | | | *74.34 |
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| | | | | |
| | Forsyth School District No. 4 v. Board of Personnel Appeals and Forsyth Education Association. Montana Supreme Court, 692 P2d 1261, 42 St. Rep. 21 (1985). | James T. Harrison, Justice | | 15.121 |
| | | | | 43.113 |
| | | | | 72.615 |
| | | | | 72.64 |
| | | | | *72.663 |
| | | | | *72.667 |
| | | | | 81.5089 |
| | | | | *81.521 |
| | | | | 81.62 |

ULP #38-81 Employer successfully met its burden under "but-for" test and lawfully disciplined employee.

R. Kelly Buck v. L. John Onstad,
Sheriff of Gallatin County
(27 April 1982)

Jack H. 09.32
Calhoun, 09.412
Hearing 71.227
Examiner *72.31
72.311
72.312
72.323
72.340

ULP #39-81 Employer did not retaliate, as alleged, against teachers because they had earlier filed a contract grievance and won an arbitration award.

Butte Teachers' Union, Local 332
v. Butte School District No. 1
(11 May 1982)

Jack H. 71.227
Calhoun, *72.324
Hearing 72.358
Examiner *72.359

ULP #42-81 Employer unlawfully refused to honor tentative agreement by not signing the collective bargaining contract incorporating the tentative agreement changes.

American Federation of State,
County and Municipal Employees
v. City of Glendive (27 May 1982)

Rick *72.539
D'Hooge, *72.572
Hearing *74.12
Examiner 74.17
74.3
74.31
*74.32
74.341
*74.35

ULP #43-81 Charges deferred to contract grievance-arbitration
ULP #44-81 procedure. Board of Personnel Appeals formally adopts
Collyer Doctrine.

William M. Converse, Affiliated
with the International Association
of Fire Fighters, Local 436 v.
Anaconda-Deer Lodge County
(20 April 1982)

Robert R. *01.25
Jensen, *47.54
Administrator 71.227
71.8
*71.81
*71.811
*71.812
71.813
*71.814
*71.816
*74.39

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|-------------------------|---|--|---|
| ULP #45-81 ULP #1-82 | Exclusive representative unlawfully refused to bargain in good faith on all statutorily mandated subjects proposed by employer and unlawfully refused to recognize and bargain with the employee's designated representative. | | |
| | Butte-Silver Bow Government v. Local No. 3022, Butte-Silver Bow Sheriff's Officers (16 July 1982) | Jack H. Calhoun, Hearing Examiner | *42.21 43.8 71.227 *72.530 *72.54 *73.434 73.440 *73.45 *73.479 74.31 |
| ULP #2-82 | Employer violated collective bargaining act by unilaterally establishing bargaining unit member's salary. | | |
| | Eastern Montana College Chapter of the American Association of University Professors v. Administration of Eastern Montana College and the Commissioner of Higher Education (30 November 1982) | Jack H. Calhoun, Hearing Examiner | 15.127 *71.13 *71.222 71.227 *71.230 72.17 *72.55 *72.6 72.652 *72.663 *72.664 *72.665 *72.667 74.31 |
| ULP #3-82 | Charge dismissed. Certification of exclusive representative revoked because petition served on wrong employer. | | |
| | American Federation of State, County and Municipal Employees v. Gallatin County (19 April 1982) | Robert R. Jensen, Administrator | 01.1 35.6 *71.16 *74.41 |
| ULP #5-82 | Employer school district did not violate collective bargaining statute by making an "ultimatum proposal" and by setting the mill levy during negotiations for a new collective bargaining agreement. | | |
| | Butte Teachers Union, Local No. 332, AFT v. Butte School District No. 1, Board of Trustees (29 July 1983) | Kathryn Walker, Hearing Examiner | 71.227 *71.518 *72.5 *72.533 *72.537 *72.581 *72.585 |

ULP #18-82. Employer unlawfully threatened to reduce hours of work for bargaining unit members and to subcontract bargaining unit work to gain bargaining concessions.

| | | |
|----------------------------------|----------|---------|
| Teamsters Local 190 v. | Rick | *09.362 |
| Yellowstone County School | D'Hooge, | 15.171 |
| District No. 26, Lockwood School | Hearing | *43.54 |
| System, Billings (9 March 1983) | | 71.517 |
| | | *72.131 |
| | | 72.17 |
| | | 72.538 |
| | | *74.17 |
| | | *74.3 |
| | | 74.31 |
| | | 74.361 |

ULP #27-82 In accordance with Collyer Doctrine, complaint deferred to contract grievance procedure, dismissed after completion of arbitration process.

| | | |
|----------------------------------|---------------|---------|
| Laurel Education Association v. | Robert R. | 47.54 |
| Laurel Public Schools (14 August | Jensen, | 71.227 |
| 1985) | Administrator | *71.811 |
| | | *71.812 |
| | | *71.814 |
| | | *71.816 |

ULP #29-82 Dual motivation test utilized in finding that employer unlawfully removed duties from teacher.

| | | |
|-----------------------------------|----------|---------|
| Unified Logan Teacher Association | Jack H. | *16.11 |
| Unit of Gallatin County Rural | Calhoun, | *16.12 |
| Montana Education Association v. | Hearing | *16.32 |
| Gallatin County School District | Examiner | 33.41 |
| No. 1, Logan School District | | 33.42 |
| (23 September 1983) | | *71.222 |
| | | 72.17 |
| | | *72.31 |
| | | 72.311 |
| | | 72.312 |
| | | 72.315 |
| | | 72.323 |
| | | *72.333 |
| | | 74.31 |
| | | 74.32 |
| | | 74.335 |
| | | 74.361 |

ULP #31-82 Employer did not, as alleged, misrepresent certain facts at the bargaining table.

| | | |
|--|--------------------------------|---|
| Montana Public Employees Association v. Lewis and Clark County Board of Commissioners (29 July 1983) | Rick D'Hooge, Hearing Examiner | *09.12 09.613 *09.62 *09.64 *71.13 71.227 72.534 *72.538 72.589 72.616 *72.664 72.77 |
|--|--------------------------------|---|

ULP #34-82 School district unlawfully paid certain of its teachers for 18 days of a strike. Reversed.

| | | |
|---|-----------------------------------|--|
| Missoula County High School Education Association v. Missoula County High School District (8 December 1983) | Jack H. Calhoun, Hearing Examiner | 62.31 *62.44 *62.521 72.13 *72.134 72.17 72.318 72.323 *72.342 *72.35 *72.351 *72.358 *72.366 74.31 74.32 *74.341 74.345 74.361 |
|---|-----------------------------------|--|

| | | |
|--|-------------------------------|--|
| Missoula County High School v. Board of Personnel Appeals and Missoula County High School Education Association, 4th Judicial District, Cause #59927 (26 Nov. 1985). | Jack L. Green, District Judge | *62.521 *81.31 *81.502 *81.503 *81.522 |
|--|-------------------------------|--|

ULP #3-83 Board of Personnel Appeals initially deferred complaint to contract grievance procedure under Collyer Doctrine and subsequently deferred to arbitrator's decision under Spielberg Doctrine.

| | | |
|---|---------------------------------|--|
| Pine Hills Education Association v. Department of Administration, Labor Relations Bureau, State of Montana (20 November 1984) | Robert R. Jensen, Administrator | 47.54 71.227 71.8 71.81 *71.82 *71.821 71.822 *71.823 71.824 |
|---|---------------------------------|--|

- ULP #9-83 Employer lawfully subcontracted housekeeping activities; union waived its right to bargain.
- | | | |
|------------------------------------|----------|---------|
| Teamsters Local 190 v. | Rick | *09.31 |
| Yellowstone County School | D'Hooge | *09.36 |
| District No. 26, Lockwood School | Hearing | *09.6 |
| System, Billings (22 October 1984) | Examiner | *09.64 |
| | | *42.11 |
| | | *43.54 |
| | | *43.541 |
| | | 71.227 |
| | | 72.31 |
| | | *72.311 |
| | | *72.358 |
| | | *72.590 |
| | | *72.591 |
- ULP #13-83 No violation of collective bargaining act alleged. Charge dismissed without a hearing.
- | | | |
|---|---------------|---------|
| Great Falls Education Association | Robert R. | *42. |
| v. Cascade County School Districts | Jensen, | *53.75 |
| No. 1 and A, Great Falls (8 March 1984) | Administrator | 71.227 |
| | | *72.589 |
| | | *72.590 |
- ULP #15-83 Employer successfully met its burden under dual motivation test; lawfully discharged employee.
- | | | |
|--|----------|---------|
| American Federation of State, | Stan | *09.32 |
| County and Municipal Employees | Gerke, | *71.13 |
| v. City of Kalispell (22 October 1984) | Hearing | 71.15 |
| | Examiner | 71.223 |
| | | *72.324 |
- ULP #16-83 Charges dismissed without an investigation. No allegation of facts that would constitute a violation of the collective bargaining act.
- | | | |
|---------------------------------|---------------|---------|
| Walter J. Briggs v. University | Robert R. | *01.21 |
| Teachers Union, MFT, University | Jensen, | *01.28 |
| of Montana (22 May 1984) | Administrator | *43.8 |
| | | 71.227 |
| | | *73.113 |
| University Teachers Union, MFT | John S. | *43.8 |
| v. Banaugh, Briggs and Dhesi, | Henson | *81.521 |
| 4th Judicial District, | District | *81.527 |
| Cause #59590 (24 October 1985) | Judge | *81.54 |

- ULP #18-83 Employer unlawfully refused to process bargaining unit members' grievance. The filing of a complaint under the Metropolitan Police Law does not diminish an employee's rights under the collective bargaining act.
- | | | |
|--|---|---|
| American Federation of State, County and Municipal Employees v. City and/or County of Butte- Silver-Bow; the Chief Executive, Sheriff, and Butte-Silver Bow Law Enforcement Commission (29 April 1985) | Stan Gerke Hearing Examiner | *43.23 *43.73 *47.32 *72.76 74.31 *74.39 |
| Butte-Silver Bow v. Board of Personnel Appeals and AFSCME Local 9, 2nd Judicial District, Cause #85-C-276 (31 December 1985). | Mark P. Sullivan, District Judge | *03.36 *03.4 15.413 *71.1 *72.76 81.521 |
- ULP #5-84 Five member Board of Personnel Appeals reversed hearing examiner in finding that employer did not threaten bargaining unit members for conducting a school survey.
- | | | |
|--|--|---|
| Billings Education Association v. Yellowstone County School District No. 2, Billings (27 August 1985) | Rick D'Hooge Hearing Examiner | *01.21 *21.5 *47.311 *72.119 *72.131 *72.151 *72.335 *72.590 |
|--|--|---|
- ULP #6-84 Inconclusive evidence that employer tampered with employee mail. Charge dismissed.
- | | | |
|---|--|-------------------|
| Montana Education Association v. Lewis and Clark County School District No. 45, Augusta (24 June 1985) | Jack H. Calhoun, Hearing Examiner | *09.374 *72.18 |
|---|--|-------------------|
- ULP #9-84 "Balancing test" utilized to find that employer lawfully discontinued the practice of payroll deduction of teachers' voluntary contributions to a political action committee.
- | | | |
|--|---------------------------------------|---|
| Lewistown Education Association v. Fergus County School District No. 1, Lewistown (14 August 1985) | Stan Gerke, Hearing Examiner | *24.17 42.42 *72.6 *72.612 *72.63 *72.65 |
|--|---------------------------------------|---|

- ULP #16-84 Absent detriment to bargaining unit members, employer lawfully assigned bargaining unit tasks to non-bargaining unit members.
- | | | |
|--|--|---|
| Billings Fire Fighters, Local 521, I.A.F.F. v. Robert S. Williams, Fire Chief, City of Billings (5 February 1985) | Jack H. Calhoun, Hearing Examiner | *03.22 *72.2 *72.23 *72.584 *72.6 *72.65 *72.77 |
|--|--|---|
- ULP #29-84 Employer unlawfully refused to recognize association's dues authorization form.
- | | | |
|---|---|--|
| Sidney Education Association v. Richland County High School District No. 1 and Elementary District No. 5, Sidney (30 August 1985) | Jack Calhoun, Hearing Examiner | *03.22 09.413 *21.3 *24.131 *24.132 *24.14 *24.15 *24.151 *24.221 *24.41 *42.42 *43.84 *71.11 *72.18 74.31 *74.32 74.361 |
|---|---|--|
- ULP #34-84 Employer unlawfully bypassed exclusive representative and negotiated agreement directly with employees.
- | | | |
|---|--|-------------------------------------|
| American Federation of State, County and Municipal Employees v. City of Dillon (26 June 1985) | Linda Skaar, Hearing Examiner | *72.21 *72.55 74.31 74.361 |
|---|--|-------------------------------------|
- ULP #2-85 Employer had legitimate business objective for laying off employee. Anti-union motivation not proven.
- | | | |
|---|--|---|
| Harold "Slim" Campbell v. County of Stillwater, Columbus (9 October 1985) | Linda Skaar, Hearing Examiner | *21.2 *35.532 71.227 71.512 *72.3 *72.311 *72.336 *72.358 72.359 *72.4 |
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APPENDIX VI
DECLARATORY RULINGS

DECLARATORY RULINGS

* Denotes Excerpt in "Annotations of Montana Cases" Section

| | | CITATIONS |
|----------|---|--|
| DR #1-76 | Montana Public Employees Association and City of Great Falls [with Respect to Unit Clarification and Modification] (23 September 1976) | 01.31 *06.3 15.6 *33.323 *37.11 *37.12 *37.13 71.227 |
| DR #2-76 | Montana Public Employees Association and University of Montana [with Respect to Unit Clarification and Modification] (24 June 1976) | 01.31 *15.12 *16.32 *33.22 *33.34 *36.111 *36.113 *36.123 *36.221 *36.222 *37.13 71.227 |
| DR #1-77 | Montana Personnel Division, Department of Administration [with Respect to House Bill 834 and Certain Collective Bargaining Units] (19 September 1977) | 01.31 *15.121 |
| DR #2-77 | Commissioner of Higher Education on Behalf of Eastern Montana College [with Respect to Applicability of Section 59-1604, RCM 1947, to Petitioner] (6 March 1978) | 01.31 *71.230 |
| DR #1-79 | Montana Public Employees Association and Labor Relations Bureau, Department of Administration [with Respect to the Applicability of ARM 24.26.520 to the Facts in the Petition] (29 March 1979) | *01.31 |
| DR #1-80 | State Labor Relations Bureau and Montana Public Employees Association [with Respect to Determination of the Permissive/ Mandatory Nature of a Bargaining Subject] (24 October 1980) | 01.31 42.42 *43.9 |

APPENDIX VII
COURT DECISIONS

COURT DECISIONS

***Denotes Excerpt in "Annotations of Montana Cases" Section**

| | | |
|--|--|--|
| AFSCME and Board of Personnel Appeals: Miles City v. 16th Judicial District, Cause #16878 (27 May 1980). | A.B. Martin District Judge | Citations *81.112 81.333 81.491 81.493 *81.5090 81.526 |
| See: UD #7-79 | | |
| AFSCME and Dyer; Livingston v. 6th Judicial District, Cause #14415 (24 August 1976). | Jack D. Shanstrom, District Judge | 81.5089 81.6 |
| See: ULP #2-75. | | |
| AFSCME and Dyer; Livingston v. Montana Supreme Court, 174 M 421, 571 P2d 374 (1977). | Paul G. Hatfield, Chief Justice | *72.51 *72.76 81.522 |
| See: ULP #2-75 | | |
| AFSCME Local 2390 and Ruth Ware v. Billings, Montana Supreme Court, 171 M 20, 555 P2d 507 (1976). | James T. Harrison, Chief Justice | *11.11 *11.12 *11.32 *15.01 |
| Andresen, et al. v. Board of Personnel Appeals, 1st Judicial District, Cause #48521, (29 August 1983). | Gordon R. Bennett, District Judge | *03.22 *32.9 *32.91 *37.1 *81.493 *81.5091 *81.523 |
| See: CC #2-81 | | |
| Banaugh, Briggs and Dhesi; University Teachers Union v. 4th Judicial District, Cause #59590 (24 October 1985). | John S. Henson, District Judge | *43.8 *81.521 *81.527 *81.54 |
| See: ULP #16-83 | | |
| Big Flat Education Association v. School District No. 43, 12th Judicial District, Cause #7428 (20 April 1977). | | 81.46 |
| See: ULP #16-76 | | |
| Bigfork Teachers Association v. Board of Personnel Appeals and Bigfork Area Education Association, 11th Judicial District, Cause #DV-79-008 (30 March 1981). | Robert C. Sykes, District Judge | 37.5 81.333 81.5084 81.6 |

See: ULP #20-78

Billings; AFSCME Local 2390
and Ruth Ware v.
Montana Supreme Court,
171 M 20, 555 P2d 507 (1976).

James T.
Harrison,
Chief
Justice *11.11
*11.12
*11.32
*15.01

Billings; Billings Firefighters
Local 521 v.
Montana Supreme Court,
694 P2d 1335 (1985)

03.341
15.43
43.64

Billings; Teamsters Local 190 and Board
of Personnel Appeals v. [Carlson]
Montana Supreme Court,
199 M 302, 648 P2d 1169, 39 St. Rep. 1414
(1982).

Frank I.
Haswell
Justice *09.3
*71.13
*71.517
*72.35
*81.491
81.50
*81.502
81.523
81.65

See: ULP #10-80

Billings v. Board of Personnel Appeals
and Teamsters Local 190,
13th Judicial District, Cause #DV-83-469
(7 February 1985).

William J.
Speare,
District
Judge 72.31
*81.521

See: ULP #10-80

Billings and Butte Teamsters Local 2
and the United Food & Commercial Workers
Locals 4R, 8, 33 & 1981, and Montana
State Council of Professional Firefighters,
Board of Personnel Appeals and Billings
Firefighters Local 521 v. Firefighters,
Montana Supreme Court,
200 M 421, 651 P2d 627, 39 St. Rep. 1844
(1982).

Frank B.
Morrison,
Jr.,
Justice *03.22
*16.3
*33.21
*33.313
33.35
*81.491
*81.493
*81.50
*81.502
*81.503
*81.504
*81.505

See: UC #1-77

Billings Education Association v. District Court,
Montana Supreme Court,
166 M 1, 531 P2d 685 (1974).

*43.7
*72.55

Billings Firefighters Local 521 v. Billings,
Montana Supreme Court,
694 P2d 1335 (1985)

03.341
15.43
43.64

Billings Firefighters Local 521 and Board of Personnel Appeals v. Billings and Butte Teamsters Local 2 and the United Food & Commercial Workers Locals 4R, 8, 33 & 1981, and Montana State Council of Professional Firefighters, Montana Supreme Court, 200 M 421, 651 P2d 627, 39 St. Rep. 1844 (1982).

Frank B. Morrison, Jr., Justice *03.22
*16.3
*33.21
*33.313
33.35
*81.491
*81.493
*81.50
*81.502
*81.503
*81.504
*81.505

See: UC #1-77

Billings School District No. 2 v. Board of Personnel Appeals and Billings Education Association, 13th Judicial District, Cause #70652 (10 October 1978).

Robert H. Wilson, District Judge 72.17
*72.55
*81.49
81.5089

See: ULP #17-75.

Billings School District No. 2 v. Board of Personnel Appeals and Billings Education Association, Montana Supreme Court, 185 M 104, 604 P2d 778, 36 St. Rep. 2311 (1979)

Frank I. Haswell, Chief Justice *71.12
*72.131
72.17
*72.55
81.521

See: ULP #17-75

Billings School District No. 2 v. Board of Personnel Appeals, 13th Judicial District, Cause #73573 (21 November 1978).

Robert H. Wilson, District Judge 09.412
81.526

See: ULP #28-76.

Billings School District No. 2 v. Board of Personnel Appeals [Widenhofer], Montana Supreme Court, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979)

Frank I. Haswell, Chief Justice *09.121
*09.33
09.412
43.233
*72.31
*72.311
*72.334
*72.362
*81.47
*81.493
81.521

See: ULP #28-76

Board of Personnel Appeals; Andresen, et al. v. 1st Judicial District, Cause #48521, (29 August 1983).

Gordon R. Bennett, District Judge *03.22
*32.9
*32.91
*37.1
*81.493
*81.5091
*81.523

See: CC #2-81

Board of Personnel Appeals;
Billings School District No. 2 v.
13th Judicial District, Cause #73573
(21 November 1978).

Robert H.
Wilson,
District
Judge

09.412
81.526

See: ULP #28-76.

Board of Personnel Appeals;
Billings School District No. 2 v. [Widenhofer],
Montana Supreme Court,
185 M 89, 604 P2d 770, 36 St. Rep. 2289
(1979)

Frank I.
Haswell,
Chief
Justice

*09.121
*09.33
09.412
43.233
*72.31
*72.311
*72.334
*72.362
*81.47
*81.493
81.521

See: ULP #28-76

Board of Personnel Appeals; City of
Hamilton v.
4th Judicial District,
Cause #DV-80-233 (25 June 1980).

John S.
Henson,
District
Judge

81.524

See: UD #26-79

Board of Personnel Appeals;
Montana Education Association v.
1st Judicial District, Cause #41304
(9 November 1977).

Gordon R.
Bennett,
District
Judge

*06.15
*06.4

Board of Personnel Appeals v.
District Court of the 11th Judicial District,
Montana Supreme Court,
183 M 223, 598 P2d 1117, 36 St. Rep. 1531
(1979).

John C.
Sheehy,
Justice

*01.24
*09.413
35.48
*35.61
37.5
81.333
*81.5084
81.521
81.62
84.191

See: ULP #20-78

Board of Personnel Appeals v. Sanders
County,
4th Judicial District,
Cause #5252 (30 July 1974).

*72.333
81.19
81.191

See: ULP #3-73

Board of Personnel Appeals v. Victor School
District No. 7,
4th Judicial District,
Cause #12998 (15 April 1977).

Jack L.
Green,
District
Judge

81.19

See: ULP #20-76

Board of Personnel Appeals and
AFSCME; Lewis and Clark County v.
1st Judicial District, Cause #43012
(5 January 1979).

See: DC #4-78

Board of Personnel Appeals and
AFSCME Local 9; Butte-Silver Bow v.
2nd Judicial District, Cause #85-C-276
(31 December 1985)

See: ULP #18-83

Board of Personnel Appeals and
American Federation of State, County
and Municipal Employees; Flathead
School District No. 5 v.
11th Judicial District, Cause #DV-80-600
(4 June 1981).

See: ULP #5-80

Board of Personnel Appeals and
Bigfork Area Education Association;
Bigfork Teachers Association v.
11th Judicial District, Cause #DV-79-008
(30 March 1981).

See: ULP #20-78

Board of Personnel Appeals and Bigfork
Education Association; School District
No. 38 Flathead and Lake Counties v.
11th Judicial District, Cause #DV-79-425
(28 May 1980)

See: ULP #20-78

Board of Personnel Appeals and
Billings Education Association;
Billings School District No. 2 v.
13th Judicial District, Cause #70652
(10 October 1978).

See: ULP #17-75.

Board of Personnel Appeals and
Billings Education Association;
Billings School District No. 2 v.
Montana Supreme Court,
185 M 104, 604 P2d 778, 36 St. Rep. 2311
(1979)

Gordon R. Bennett,
District Judge 81.521

Mark P. Sullivan,
District Judge *03.36
*03.4
15.413
*71.1
*72.76
81.521

Robert C. Sykes,
District Judge 47.61
72.71
81.19
81.5082
81.521

Robert C. Sykes,
District Judge 37.5
81.333
81.5084
81.6

J.M. Salansky,
District Judge 81.46
*81.49
81.491
81.5081
81.5083
81.526

Robert H. Wilson,
District Judge 72.17
*72.55
*81.49
81.5089

Frank I. Haswell,
Chief Justice *71.12
*72.131
72.17
*72.55
81.521

See: ULP #17-75

Board of Personnel Appeals and Billings
Firefighters Local 521 v. Billings
and Butte Teamsters Local 2 and the
United Food & Commercial Workers
Locals 4R, 8, 33 & 1981,
and Montana State Council of Professional
Firefighters,
Montana Supreme Court,
200 M 421, 651 P2d 627, 39 St. Rep. 1844
(1982).

| | |
|-----------|---------|
| Frank B. | *03.22 |
| Morrison, | *16.3 |
| Jr., | *33.21 |
| Justice | *33.313 |
| | 33.35 |
| | *81.491 |
| | *81.493 |
| | *81.50 |
| | *81.502 |
| | *81.503 |
| | *81.504 |
| | *81.505 |

See: UC #1-77

Board of Personnel Appeals and Department
of Administration, Labor Relations Bureau;
Montana Public Employees Association v.
Montana Supreme Court,
(1985).

| | |
|------------|---------|
| William E. | *33.313 |
| Hunt, Sr., | *33.41 |
| Justice | *36.123 |
| | *81.46 |
| | *81.48 |

See: UC #6-80

Board of Personnel Appeals and
Forsyth Education Association;
Forsyth School District No. 4 v.
Montana Supreme Court,
692 P2d 1261, 42 St. Rep. 21 (1985).

| | |
|-----------|---------|
| James T. | 15.121 |
| Harrison, | 43.113 |
| Justice | 72.615 |
| | 72.64 |
| | *72.663 |
| | *72.667 |
| | 81.5089 |
| | *81.521 |
| | 81.62 |

See: ULP #37-81

Board of Personnel Appeals and
Kalispell Education Association;
Kalispell Federation of Teachers v.
11th Judicial District,
Cause #27317 (14 July 1978).

| | |
|-----------|--------|
| J.M. | 81.521 |
| Salansky, | |
| District | |
| Judge | |

See: DC #6-76

Board of Personnel Appeals and
McCarvel; Teamsters Local 45 v.
Montana Supreme Court,
195 M 272, 635 P2d 1310, 38 St. Rep. 1841
(1981).

| | |
|---------|---------|
| Gene B. | *01.1 |
| Daly, | 01.29 |
| Justice | *03.4 |
| | 09.413 |
| | *23.2 |
| | 23.7 |
| | *47.21 |
| | *73.113 |
| | 81.523 |
| | 81.65 |

See: ULP #24-77

Board of Personnel Appeals and
McCarvel; Teamsters Local 45 v.
1st Judicial District,
Cause #50170 (19 August 1985).

Gordon R.
Bennett,
District
Judge

09.413
*23.1
*23.26
*47.11
*47.21
*47.32
*71.13
*73.113
*74.3
*74.344
*74.345
*74.362
*81.31
*81.493
*81.50
*81.502
*81.503
*81.5089
*81.521

See: ULP #24-77

Board of Personnel Appeals and Missoula
County High School Education Association;
Missoula County High School v.
4th Judicial District, Cause #59927
(26 November 1985).

Jack L.
Green,
District
Judge

*62.521
*81.31
*81.502
*81.503
*81.522

See: ULP #34-82

Board of Personnel Appeals and Montana
District Council of Retail Clerks;
Department of Revenue v.
1st Judicial District,
Cause #37721 (12 April 1974).

Peter G.
Meloy,
District
Judge

81.46
81.526

See: ULP #2-73

Board of Personnel Appeals and Montana
Public Employees Association;
Office of Public Instruction v.
1st Judicial District, Cause #44192
(9 May 1980).

Gordon R.
Bennett,
District
Judge

81.331
81.5089
81.526

See: ULP #30-78

Board of Personnel Appeals and Montana
Public Employees Association;
Superintendent of Public Instruction v.
1st Judicial District, Cause #42714
(26 September 1978).

Gordon R.
Bennett,
District
Judge

81.333
81.5090

See: UD #22-77

Board of Personnel Appeals and
Teamsters Local 190; Billings v.
13th Judicial District, Cause #DV-83-469
(7 February 1985).

William J.
Speare,
District
Judge

72.31
*81.521

See: ULP #10-80

Board of Personnel Appeals and Teamsters Local 190; Klundt v. Montana Supreme Court, 43 St. Rep. 1 (1986).

William E.
Hunt, Sr.,
Justice

*21.11
*23.4
*71.5
*73.113
81.521
*81.526
*84.192

See: ULP #38-80

Board of Personnel Appeals, Board of Regents of Higher Education, Montana State University and M.S.U. Chapter of the American Association of University Professors; Montana Society of Engineers v. 1st Judicial District, Cause #41317 (7 March 1978) and Cause #41320 (29 November 1977).

Gordon R.
Bennett,
District
Judge

03.22
*81.31
*81.491

See: UD #11-76

Board of Personnel Appeals, City of Billings and Teamsters Local 190; Klundt v. 13th Judicial District, Cause #DV 84-785 (19 April 1985).

William J.
Speare,
District
Judge

*81.526

See: ULP #38-80

Board of Personnel Appeals, City of Billings and Teamsters Local 190; Klundt v. 13th Judicial District, Cause #DV 84-2555 (24 October 1985).

Diane G.
Barz,
District
Judge

*71.230
*81.493
*81.50
*81.502
*81.503
*81.521
*81.54

See: ULP #38-80

Board of Personnel Appeals, Government of Butte-Silver Bow, and Butte Teamsters Local 2; Montana Public Employees Association v. 1st Judicial District, Cause #42648 (14 November 1978).

Gordon R.
Bennett,
District
Judge

*09.613
*09.62
*21.7
*32.1
*33.1
*34.21
*37.11
*37.2
*81.505
*81.506
81.522
*81.523

See: DC #22-77

Board of Personnel Appeals, Montana Human Rights Commission, and City of Missoula; Clark v. 4th Judicial District, Cause #DV-79-407 (21 January 1980).

Jack L.
Green,
District
Judge

84.182

See: ULP #11-78

Board of Personnel Appeals,
Montana State University, and
IBPAT Locals 1023 and 851, Montana
Maintenance Painters and Allied Trades,
Local 11-A; Delger and Haniszewski v.
1st Judicial District,
Cause #47869 (5 October 1982).

Peter G.
Meloy,
District
Judge

*09.21
*22.2
31.46
*34.39
*37.1
81.521

See: DC #8-81

Board of Personnel Appeals, State Labor
Relations Bureau, Department of
Administration, Workers' Compensation
Division; Montana Public Employees
Association v.
1st Judicial District,
Cause #42916 (26 September 1978).

Gordon R.
Bennett,
District
Judge

35.61

See: UD #21-78

Board of Personnel Appeals, State
Personnel Appeals Division and the
Department of Justice; Wage
Appeal of Highway Patrol Officers v.
Montana Supreme Court,
676 P2d 194, 41 St. Rep. 154
(1984).

John C.
Sheehy,
Justice

04.1
21.11
21.13
*46.22
*81.491
*81.502
*81.504

Board of Personnel Appeals, Teamsters
Local 45 and Montana Public Employees
Association; Great Falls v.
8th Judicial District,
Cause #83051C (10 November
1977).

Joel G.
Roth,
District
Judge

81.526

See: UD #18-76

Bridger Education Association v.
Carbon County School District No. 2,
Montana Supreme Court,
678 P2d 659 (1984).

03.31
21.11
43.233

Butte School District; Butte
Teachers' Union Local 332 v.
Montana Supreme Court,
655 P2d 146 (1982)

09.391
09.651
46.31

Butte-Silver Bow v. Board of Personnel
Appeals and AFSCME Local 9,
2nd Judicial District, Cause #85-C-276
(31 December 1985)

Mark P.
Sullivan,
District
Judge

*03.36
*03.4
15.413
*71.1
*72.76
81.521

See: ULP #18-83

Butte Teachers' Union Local 332 v.
Butte School District,
Montana Supreme Court,
655 P2d 146 (1982)

09.391
09.651
46.31

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|---|---|--|
| Butte Teachers' Union Local 332 v. Silver Bow School District No. 1, et al., Montana Supreme Court, 173 M 215, 567 P2d 51 (1977). | Paul G. Hatfield Chief Justice | *43.94 *47.223 *72.651 *81.6 |
| Carbon County School District No. 2; Bridger Education Association v. Montana Supreme Court, 678 P2d 659 (1984). | | 03.31 21.11 43.233 |
| Clark v. Montana Human Rights Commission, Board of Personnel Appeals and City of Missoula, 4th Judicial District, Cause #DV-79-407 (21 January 1980). | Jack L. Green, District Judge | 84.182 |
| See: ULP #11-78 | | |
| Delger and Haniszewski v. Board of Personnel Appeals, Montana State University, and IBPAT Locals 1023 and 851, Montana Maintenance Painters and Allied Trades, Local 11-A, 1st Judicial District, Cause #47869 (5 October 1982). | Peter G. Meloy, District Judge | *09.21 *22.2 31.46 *34.39 *37.1 81.521 |
| See: DC #8-81 | | |
| Department of Fish, Wildlife and Parks; Hutchin v. Montana Supreme Court, 688 P2d 856 (1984) | | 15.82 74.33 74.335 74.34 74.341 |
| Department of Highways v. Public Employees Craft Council, Montana Supreme Court, 165 M 349, 529 P2d 785 (1974). | James T. Harrison, Chief Justice | 09.413 *21.5 *21.8 *62.2 |
| Department of Highways, AFSCME and Board of Personnel Appeals; Teamsters Local 23, affiliated with the Public Employees Craft Council v. 9th Judicial District, Cause #11592 and Cause #8835 (24 April 1979) | R.D. McPhillips, District Judge | *22.4 *31.3 *31.46 *33.342 *34.12 34.13 34.18 41.132 *43.7 *43.8 *46.31 *47.223 *47.55 *47.56 *47.83 |
| See: DC #5-75 | | |

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|---|---|---|
| Department of Livestock, et al.; Nye v. Montana Supreme Court, 196 M 222 (1982) | Fred Weber, Justice | 16.45 21.11 *21.12 *21.13 *34.33 *43.23 *43.233 |
| Department of Revenue v. Board of Personnel Appeals and Montana District Council of Retail Clerks, 1st Judicial District, Cause #37721 (12 April 1974). | Peter G. Meloy, District Judge | 81.46 81.526 |
| See: ULP #2-73 | | |
| District Court; Billings Education Association v. Montana Supreme Court, 166 M 1, 531 P2d 685 (1974). | | *43.7 *72.55 |
| District Court of the 11th Judicial District; Board of Personnel Appeals v. Montana Supreme Court, 183 M 223, 598 P2d 1117, 36 St. Rep. 1531 (1979). | John C. Sheehy, Justice | *01.24 *09.413 35.48 *35.61 37.5 81.333 *81.5084 81.521 81.62 84.191 |
| See: ULP #20-78 | | |
| Flathead School District and Kalispell Education Association; Kalispell Federation of Teachers v. 11th Judicial District, Cause #25413 (17 February 1976). | Robert S. Keller, District Judge | *01.1 03.31 |
| See: UD #22-75 | | |
| Flathead School District No. 5 v. Board of Personnel Appeals and American Federation of State, County and Municipal Employees, 11th Judicial District, Cause #DV-80-600 (4 June 1981). | Robert C. Sykes, District Judge | 47.61 72.71 81.19 81.5082 81.521 |
| See: ULP #5-80 | | |
| Flathead Valley Community College; Rippey v. Montana Supreme Court, 682 P2d 1868 (1984) | | 03.31 11.52 11.55 15.122 43.168 |

Ford v. University of Montana and
Missoula Typographical Union No. 277,
Montana Supreme Court,
183 M 112, 598 P2d 604, 36 St. Rep. 1485
(1979).

Frank I.
Haswell,
Chief
Justice
*01.1
*04.5
09.413
*23.1
*23.2
*47.21
72.
73.
*73.113

Forsyth School District No. 4 v. Board
of Personnel Appeals and Forsyth
Education Association,
Montana Supreme Court,
692 P2d 1261, 42 St. Rep. 21 (1985).

James T.
Harrison,
Justice
15.121
43.113
72.615
72.64
*72.663
*72.667
81.5089
*81.521
81.62

See: ULP #37-81

Great Falls; International Association of
Firefighters Local 8 v.
Montana Supreme Court,
174 M 53, 568 P2d 541, 34 St. Rep. 991 (1977).

Frank I.
Haswell,
Justice
*46.22

Great Falls; Welsh v.
Montana Supreme Court,
690 P2d 406 (1984)

09.613
15.43
*21.11
*21.92
43.1683
43.23
*43.233
74.331
74.341

Great Falls; Young by Laborers Local 1334 v.
8th Judicial District, Cause #ADV-80-304
(1 December 1981).

Joel G.
Roth,
District
Judge
*01.1
01.32
47.54
71.8
72.11
72.2
72.319
72.334
72.4
72.511
81.505
81.5082
*81.521
81.522
81.6

See: ULP #3-79

Great Falls; Young by Laborers Local 1334 v.
Montana Supreme Court,
632 P2d 1111
(1981)

Frank B.
Morrison,
Jr.,
Justice
*81.19
*81.374
81.65

See: ULP #3-79

Great Falls; Young by Laborers Local 1334 v.
Montana Supreme Court,
646 P2d 512, 39 St. Rep. 1047
(1982).

John C.
Sheehy,
Justice

09.413
*47.18
47.54
*71.11
*71.15
*71.223
71.8
71.811
71.813
71.816
72.1
72.11
*72.18
72.2
*72.31
72.311
*72.316
72.319
72.334
72.4
72.511
81.505
81.5082
81.521
81.522
81.6

See: ULP #3-79

Great Falls and Raynes v. Johnson,
Montana Supreme Court,
696 P2d 423 (1985).

03.34
15.414
21.11
43.23
43.233

Great Falls v. Board of Personnel Appeals,
Teamsters Local 45 and Montana Public
Employees Association,
8th Judicial District,
Cause #83051C (10 November 1977).

Joel G.
Roth,
District
Judge

81.526

See: UD #18-76

Great Falls v. Young by Laborers Local
1334 and Board of Personnel Appeals,
8th Judicial District, Cause #ADV-83-393
(8 November 1983)

H. William
Coder,
District
Judge

*74.343
74.344
74.345
*81.50
*81.5087
81.521
*81.54

See: ULP #3-79

Great Falls v. Young by Laborers Local
1334 and Board of Personnel Appeals,
Montana Supreme Court,
686 P2d 185 (1984).

See: ULP #3-79

L.C. *09.413
Gulbrandson, 74.335
Justice 74.336
*74.34
*74.341
74.343
*74.344
*74.345
*81.502
81.5087
81.521

City of Hamilton v. Board of Personnel
Appeals,
4th Judicial District,
Cause #DV-80-233 (25 June 1980).

See: UD #26-79

John S. 81.524
Henson,
District
Judge

Hutchin v. Department of Fish, Wildlife
and Parks,
Montana Supreme Court,
688 P2d 856 (1984)

15.82
74.33
74.335
74.34
74.341

International Association of Firefighters
Local 8 v. Great Falls,
Montana Supreme Court,
174 M 53, 568 P2d 541, 34 St. Rep. 991
(1977).

Frank I. *46.22
Haswell,
Justice

Jarussi v. School District 28 et al.,
Montana Supreme Court,
664 P2d 316 (1983)

21.11
21.12

Johnson; Great Falls and Raynes v.
Montana Supreme Court,
696 P2d 423 (1985).

03.34
15.414
21.11
43.23
43.233

Kalispell Federation of Teachers
v. Board of Personnel Appeals and
Kalispell Education Association,
11th Judicial District,
Cause #27317 (14 July 1978).

J.M. 81.521
Salansky,
District
Judge

See: DC #6-76

Kalispell Federation of Teachers
v. Flathead School District and
Kalispell Education Association,
11th Judicial District,
Cause #25413 (17 February 1976).

Robert S. *01.1
Keller, 03.31
District
Judge

See: UD #22-75

Klundt v. Board of Personnel Appeals,
City of Billings, and Teamsters Local 190,
13th Judicial District, Cause #DV 84-785
(19 April 1985).

William J.
Speare,
District
Judge

*81.526

See: ULP #38-80

Klundt v. Board of Personnel Appeals,
City of Billings and Teamsters Local 190,
13th Judicial District, Cause #DV 84-2555
(24 October 1985).

Diane G.
Barz,
District
Judge

*71.230
*81.493
*81.50
*81.502
*81.503
*81.521
*81.54

See: ULP #38-80

Klundt v. Board of Personnel Appeals
and Teamsters Local 190,
Montana Supreme Court,
43 St. Rep. 1 (1986).

William E.
Hunt, Sr.,
Justice

*21.11
*23.4
*71.5
*73.113
81.521
*81.526
*84.192

See: ULP #38-80

Lake County School District No. 7-J,
Charlo; Lower Flathead Education
Association v.
4th Judicial District,
Cause #10114 (16 October 1978).

E. Gardner
Brownlee,
District
Judge

81.526

See: ULP #39-76

Lewis and Clark County v. Board of
Personnel Appeals and AFSCME,
1st Judicial District, Cause #43012
(5 January 1979).

Gordon
Bennett,
District
Judge

81.521

See: DC #4-78

Livingston v. AFSCME and Dyer,
6th Judicial District, Cause #14415
(24 August 1976).

Jack D.
Shanstrom,
District
Judge

81.5089
81.6

See: ULP #2-75.

Livingston v. AFSCME and Dyer,
Montana Supreme Court,
174 M 421, 571 P2d 374 (1977).

Paul G.
Hatfield,
Chief
Justice

*72.51
*72.76.
81.522

See: ULP #2-75

Lower Flathead Education Association v.
Lake County School District No. 7-J,
Charlo,
4th Judicial District,
Cause #10114 (16 October 1978).

E. Gardner
Brownlee,
District
Judge

81.526

See: ULP #39-76

McRae; Small v.
Montana Supreme Court,
651 P2d 982. 39 St. Rep. 1896 (1982).

| | |
|----------|---------|
| James T. | *09.413 |
| Harrison | *47.32 |
| Justice | *47.55 |

Miles City v. AFSCME and Board
of Personnel Appeals,
16th Judicial District,
Cause #16878 (27 May 1980).

| | |
|----------|----------|
| A.B. | *81.112 |
| Martin | 81.333 |
| District | 81.491 |
| Judge | 81.493 |
| | *81.5090 |
| | 81.526 |

See: UD #7-79

Missoula County High School v. Board
of Personnel Appeals and Missoula County
High School Education Association,
4th Judicial District, Cause #59927
(26 November 1985).

| | |
|----------|---------|
| Jack L. | *62.521 |
| Green, | *81.31 |
| District | *81.502 |
| Judge | *81.503 |
| | *81.522 |

See: ULP #34-82

Montana Education Association v.
Board of Personnel Appeals,
1st Judicial District, Cause #41304
(9 November 1977).

| | |
|-----------|--------|
| Gordon R. | *06.15 |
| Bennett, | *06.4 |
| District | |
| Judge | |

Montana Human Rights Commission,
Board of Personnel Appeals and City of
Missoula; Clark v.
4th Judicial District,
Cause #DV-79-407 (21 January 1980).

| | |
|----------|--------|
| Jack L. | 84.182 |
| Green, | |
| District | |
| Judge | |

See: ULP #11-78

Montana Public Employees Association v.
Board of Personnel Appeals, Government
of Butte-Silver Bow, and Butte Teamsters
Local 2,
1st Judicial District,
Cause #42648 (14 November 1978).

| | |
|-----------|---------|
| Gordon R. | *09.613 |
| Bennett, | *09.62 |
| District | *21.7 |
| Judge | *32.1 |
| | *33.1 |
| | *34.21 |
| | *37.11 |
| | *37.2 |
| | *81.505 |
| | *81.506 |
| | 81.522 |
| | *81.523 |

See: DC #22-77

Montana Public Employees Association v.
Department of Administration, Labor
Relations Bureau and Board of Personnel
Appeals,
Montana Supreme Court,(1985).

| | |
|------------|---------|
| William E. | *33.313 |
| Hunt, Sr., | *33.41 |
| Justice | *36.123 |
| | *81.46 |
| | *81.48 |

See: UC #6-80

Montana Public Employees Association v. State Labor Relations Bureau, Department of Administration, Workers' Compensation Division and Board of Personnel Appeals, 1st Judicial District, Cause #42916 (26 September 1978).

Gordon R. Bennett,
District Judge

35.61

See: UD #21-78

Montana Society of Engineers v. Board of Personnel Appeals, Board of Regents of Higher Education, Montana State University and M.S.U. Chapter of the American Association of University Professors, 1st Judicial District, Cause #41317 (7 March 1978) and Cause #41320 (29 November 1977).

Gordon R. Bennett,
District Judge

03.22
*81.31
*81.491

See: UD #11-76

Nye v. Department of Livestock, et al., Montana Supreme Court, 196 M 222 (1982)

Fred Weber,
Justice

16.45
21.11
*21.12
*21.13
*34.33
*43.23
*43.233

Office of Public Instruction v. Board of Personnel Appeals and Montana Public Employees Association, 1st Judicial District, Cause #44192 (9 May 1980).

Gordon R. Bennett,
District Judge

81.331
81.5089
81.526

See: ULP #30-78

Public Employees Craft Council; Department of Highways v. Montana Supreme Court, 165 M 349, 529 P2d 785 (1974).

James T. Harrison,
Chief Justice

09.413
*21.5
*21.8
*62.2

Ravalli County; Teamsters Local 448 v. 4th Judicial District, Cause #12054 (4 November 1974).

Edward Dussault,
District Judge

81.19
81.331
81.491
81.505
81.506
81.526

See: ULP #4-73

In the Matter of William Raynes, Montana Supreme Court, 698 P2d 856 (1985)

15.414
21.11
43.23
43.233

Raynes and Great Falls v. Johnson, Montana Supreme Court, 696 P2d 423 (1985).

03.34
15.414
21.11
43.23
43.233

| | | |
|--|--|---|
| Reiter v. Yellowstone County, Montana Supreme Court, Cause #80-281 (1981) | | 04.1 09.613 09.71 21.11 21.12 |
| Richland County School Districts (Elementary District No. 7 and High School District No. 2); Savage Education Association v. Montana Supreme Court, 692 P2d 1237 (1984) | | 15.121 *21.11 43.233 47.83 47.86 *47.87 |
| Rippey v. Flathead Valley Community College, Montana Supreme Court, 682 P2d 1868 (1984) | | 03.31 11.52 11.55 15.122 43.168 |
| Sanders County; Board of Personnel Appeals v. 4th Judicial District, Cause #5252 (30 July 1974). | | *72.333 81.19 81.191 |
| See: ULP #3-73 | | |
| Savage Education Association v. Richland County School Districts (Elementary District No. 7 and High School District No. 2), Montana Supreme Court, 692 P2d 1237 (1984) | | 15.121 *21.11 43.233 47.83 47.86 *47.87 |
| Savage Education Association and Board of Personnel Appeals; Savage Public Schools (Richland County Elementary District No. 7 and High School District No. 3) v. Montana Supreme Court, 199 M 39, 647 P2d 833, 39 St. Rep. 1192 (1982). | Frank I. Haswell, Chief Justice | 47.223 *72.51 81.491 *81.492 *81.50 81.5081 *81.5089 *81.521 |
| See: ULP #30-79 | | |
| Savage Public Schools (Richland County Elementary District No. 7 and High School District No. 3) v. Savage Education Association and Board of Personnel Appeals, Montana Supreme Court, 199 M 39, 647 P2d 833, 39 St. Rep. 1192 (1982). | Frank I. Haswell, Chief Justice | 47.223 *72.51 81.491 *81.492 *81.50 81.5081 *81.5089 *81.521 |
| See: ULP #30-79 | | |

School District No. 2 of Yellowstone County; Sorlie v. Montana Supreme Court, 667 P2d 400, 40 St. Rep. 1070 (1983).

Frank I. Haswell,
Chief Justice *11.7
*43.422
*43.95
*43.98

School District 28 et al.; Jarussi v. Montana Supreme Court, 664 P2d 316 (1983)

21.11
21.12

School District No. 38 Flathead and Lake Counties v. Board of Personnel Appeals and Bigfork Education Association, 11th Judicial District, Cause #DV-79-425 (28 May 1980)

J.M. Salansky,
District Judge 81.46
*81.49
81.491
81.5081
81.5083
81.526

See: ULP #20-78

School District No. 43; Big Flat Education Association v. 12th Judicial District, Cause #7428 (20 April 1977).

81.46

See: ULP #16-76

Silver Bow School District No. 1, et al.; Butte Teachers' Union Local 332 v. Montana Supreme Court, 173 M 215, 567 P2d 51 (1977).

Paul G. Hatfield
Chief Justice *43.94
*47.223
*72.651
*81.6

Small v. McRae, Montana Supreme Court, 651 P2d 982, 39 St. Rep. 1896 (1982).

James T. Harrison
Justice *09.413
*47.32
*47.55

Sorlie v. School District No. 2 of Yellowstone County, Montana Supreme Court, 667 P2d 400, 40 St. Rep. 1070 (1983).

Frank I. Haswell,
Chief Justice *11.7
*43.422
*43.95
*43.98

Superintendent of Public Instruction v. Board of Personnel Appeals and Montana Public Employees Association, 1st Judicial District, Cause #42714 (26 September 1978).

Gordon R. Bennett,
District Judge 81.333
81.5090

See: UD #22-77

Teamsters Local 23, affiliated with the Public Employees Craft Council v. Department of Highways, AFSCME and Board of Personnel Appeals, 9th Judicial District, Cause #11592 and Cause #8835 (24 April 1979)

R.D. McPhillips,
District Judge *22.4
*31.3
*31.46
*33.342
*34.12
34.13
34.18
41.132
*43.7
*43.8
*46.31
*47.223
*47.55
*47.56
*47.83

See: DC #5-75

Teamsters Local 45 v. Board of
Personnel Appeals and McCarvel
Montana Supreme Court,
195 M 272, 635 P2d 1310, 38 St.Rep. 1841
(1981).

See: ULP #24-77

Gene B.
Daly,
Justice

*01.1
01.29
*03.4
09.413
*23.2
23.7
*47.21
*73.113
81.523
81.65

Teamsters Local 45 v. Board of
Personnel Appeals and McCarvel,
1st Judicial District,
Cause #50170 (19 August 1985).

See: ULP #24-77

Gordon R.
Bennett,
District
Judge

09.413
*23.1
*23.26
*47.11
*47.21
*47.32
*71.13
*73.113
*74.3
*74.344
*74.345
*74.362
*81.31
*81.493
*81.50
*81.502
*81.503
*81.5089
*81.521

Teamsters Local 190 and Board of
Personnel Appeals v. Billings, [Carlson],
Montana Supreme Court,
199 M 302, 648 P2d 1169, 39 St. Rep. 1414
(1982).

See: ULP #10-80

Frank I.
Haswell
Justice

*09.3
*71.13
*71.517
*72.35
*81.491
81.50
*81.502
81.523
81.65

Teamsters Local 448 v. Ravalli County,
4th Judicial District, Cause #12054
(4 November 1974).

See: ULP #4-73

Edward
Dussault,
District
Judge

81.19
81.331
81.491
81.505
81.506
81.526

University of Montana and Missoula
Typographical Union No. 277; Ford v.
Montana Supreme Court,
183 M 112, 598 P2d 604, 36 St. Rep. 1485
(1979).

Frank I.
Haswell,
Chief
Justice

*01.1
*04.5
09.413
*23.1
*23.2
*47.21
72.
73.
*73.113

University Teachers Union v. Banaugh,
Briggs and Dhesi,
4th Judicial District,
Cause #59590 (24 October 1985).

John S.
Henson,
District
Judge

*43.8
*81.521
*81.527
*81.54

See: ULP #16-83

Victor School District No. 7; Board of
Personnel Appeals v.
4th Judicial District,
Cause #12998 (15 April 1977)..

Jack L.
Green,
District
Judge

81.19

See: ULP #20-76

Wage Appeal of Highway Patrol Officers
v. Board of Personnel Appeals, State
Personnel Appeals Division
and the Department of Justice,
Montana Supreme Court,
676 P2d 194, 41 St. Rep. 154
(1984).

John C.
Sheehy,
Justice

04.1
21.11
21.13
*46.22
*81.491
*81.502
*81.504

Welsh v. Great Falls,
Montana Supreme Court,
690 P2d 406 (1984)

09.613
15.43
*21.11
*21.92
43.1683
43.23
*43.233
74.331
74.341

Wibaux County High School, et al.;
Wibaux Education Association v.
Montana Supreme Court
175 M 331, 573 P2d 1162 (1978).

Daniel
Shea,
Justice

*03.31
*43.23

Wibaux Education Association v. Wibaux
County High School, et al.
Montana Supreme Court
175 M 331, 573 P2d 1162 (1978).

Daniel
Shea,
Justice

*03.31
*43.23

Yellowstone County; Reiter v.
Montana Supreme Court, Cause #80-281
(1981)

04.1
09.613
09.71
21.11
21.12

Young by Laborers Local 1334 and
Board of Personnel Appeals; Great Falls v.
8th Judicial District, Cause #ADV-83-393
(8 November 1983)

H. William
Coder,
District
Judge

*74.343
74.344
74.345
*81.50
*81.5087
81.521
*81.54

See: ULP #3-79

| | | |
|--|---------------------------------|---|
| Young by Laborers Local 1334 and Board of Personnel Appeals; Great Falls v. Montana Supreme Court, 686 P2d 185 (1984). | L.C. Gulbrandson, Justice | *09.413 74.335 74.336 *74.34 *74.341 74.343 *74.344 *74.345 *81.502 81.5087 81.521 |
| See: ULP #3-79 | | |
| Young by Laborers Local 1334 v. Great Falls, 8th Judicial District, Cause #ADV-80-304 (1 December 1981). | Joel G. Roth, District Judge | *01.1 01.32 47.54 71.8 72.11 72.2 72.319 72.334 72.4 72.511 81.505 81.5082 *81.521 81.522 81.6 |
| See: ULP #3-79 | | |
| Young by Laborers Local 1334 v. Great Falls, Montana Supreme Court, 632 P2d 1111 (1981) | Frank B. Morrison, Jr., Justice | *81.19 *81.374 81.65 |
| See: ULP #3-79 | | |
| Young by Laborers Local 1334 v. Great Falls, Montana Supreme Court, 646 P2d 512, 39 St. Rep. 1047 (1982). | John C. Sheehy, Justice | 09.413 *47.18 47.54 *71.11 *71.15 *71.223 71.8 71.811 71.813 71.816 72.1 72.11 *72.18 72.2 *72.31 72.311 *72.316 72.319 72.334 72.4 72.511 81.505 81.5082 81.521 81.522 81.6 |
| See: ULP #3-79 | | |

APPENDIX VIII
HEARING EXAMINERS

HEARING EXAMINERS

| | |
|------------------------|--|
| Adams, James | UDs #31-75 and #36-75. |
| Andrews, Jeff | DC #9-77 and #ULPs #1-76, #5-76, #6-76, #14-76, #17-76, #19-76, #20-76, #21-76, #38-76, #6-77, #8-77, #25-77, #36-77, and #12-78. |
| Brown, Cordell R. | DC #2-75 and ULPs #13-74, #15-74, #3-75, and #8-75. |
| Calhoun, Jack H. | UDs #8-77, #18-77, #9-79, #18-79, #29-79, #32-79, #1-80, #7-80, and #9-83; CC #2-81; UCs #4-79, #4-80, #6-80, #7-80, and #2-83; DC #11-79; ULPs #30-77, #17-78, #19-78, #3-79, #31-79, #43-79, #47-79, #10-80, #13-80, #19-80, #23-80, #30-80, #39-80, #10-81, #22-81, #38-81, #39-81, #45-81, #2-82, #29-82, #34-82, #6-84, #16-84, and #29-84; and DR #1-80. |
| Cromley, Brent | DC #8-77 and ULPs #11-75, and #20-75. |
| Davis, Donna K. | UD #14-76 and ULP #18-76. |
| D'Hooge, Rick R. | UDs #22-77, #12-81, and #22-81; UC #1-81; DC #22-77; and ULPs #19-77, #18-78, #20-78, #19-79, #26-79, #30-81, #42-81, #18-82, #31-82, #9-83, and #5-84. |
| Gardner, James E. | UC #1-83. |
| Gerke, Stan | UDs #24-78, #7-79, #26-79, and #5-80; UC #6-82; DCs #6-78, #15-79, and #2-81; and ULPs #27-77, #23-78, #30-79, #29-80, #34-80, #38-80, #37-81, #15-83, #18-83, and #9-84. |
| Griffing, Elizabeth L. | UD #14-80 and ULP #7-80. |
| Hooks, Patrick F. | UDs #1-74, #2-74, #3-74, #4-74, #5-74, #6-74, #9-74, #11-74, #12-74, #13-74, #14-74, #15-74, #16-74, #17-74, #18-74, #19-74, #21-74, #22-74, #25-74, #26-74, #27-74, #28-74, #29-74, #30-74, #31-74, #32-74, #33-74, #35-74, #36-74, #37-74, #39-74, #40-74, #42-74, #43-74, #44-74, #45-74, #49-74, #50-74, #51-74, #52-74, #53-74, #54-74, #57-74, #61-74, #62-74, and #65C-74 and ULPs #2-74, #3-74, #9-74, and #11-79. |
| Jensen, Robert R. | UDs #22-75, #26-75, #27-75, #8-76, #6-77, #4-79, #1-81, and #7-84; DC #5-78; ULPs #43-81, #3-82, #27-82, #3-83, #13-83, and #16-83; and DR #1-79. |
| Johnson, Duane | ULP #3-73. |
| Kennedy, Edward | UDs #58-74, #42-75, #12-76, #13-76, #15-76, and #24-76. |
| Locendorf, Jerome T. | ULP #10-74. |
| Maltese, Peter O. | UDs #10C-74, #20-74, #55S-74, #60S-74, and #66S-74; EC #6-74; UM #1-75; and ULPs #3-73, #4-73, #1-74, #12-74, #2-75, #5-75, and #12-75. |

| | |
|----------------------|--|
| Martin, Clarette C. | ULP #29-79. |
| Massman, George | UDs #63S-74, #64S-74, #1-75, and #6-75. |
| Midgett, Bruce R. | ULP #10-79. |
| O'Neill, Emmett | UD #67S-74. |
| Painter, Jerry L. | UDs #11-76, #18-76, and #18-78; UM #5-76; DCs #6-76, #12-77, #10-79; ULPs #13-75, #18-75, #3-76, #11-76, #13-76, #28-76, #29-76, #7-77, #14-77, #7-78, and #11-78; and DRs #1-76, #2-76, and #2-77. |
| Raucci, Francis J. | ULPs #2-73 and #16-75. |
| Saeman, Ray | UDs #19-75, #33-75, and #34-75; UMs #2-75 and #3-77; ULPs #4-76, #15-76, #25-76, and #41-76. |
| Skaar, Linda | UDs #17-77, #21-77, #22-78, #27-79, #23-80, #6-81, #8-83, and #6-84; UCs #3-79, #6-79, and #2-84; DCs #4-78 and 4-83; and ULPs #37-76, #5-77, #24-77, #30-78, #50-79, #15-80, #16-81, #33-81, #34-84, and #2-85. |
| Smith, Barry F. | UD #5-77; DC #17-79; ULPs #17-77 and #2-79; and DR #1-77. |
| Toner, Jerry W. | ULP #5-73. |
| Ugrin, Neil E. | DC #5-75 and ULPs #14-74 and #17-75. |
| Van Riper, Janice S. | ULP #34-78. |
| Walker, Kathryn | UDs #11-77, #6-79, #24-79, #2-80, and #1-82; UCs #1-77, #8-79, #3-83 and #5-83; DCs #8-81 and #5-82; and ULPs #16-76, #33-76, #39-76, #13-78, #16-78, #42-79, #44-79, #5-80, #18-81, #19-81, and #5-82. |

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